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Attorneys for the Plaintiffs

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA (SAN JOSE)

ADR

RICHARD W. WICKING
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 U.S. DISTRICT COURT
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FILED

Case No.: 09 03303

RS

ROBERT PRITIKIN, EARL O BENDER and
 JOAN C. BENDER individually and as trustees
 of the BENDER FAMILY TRUST, dated
 JUNE 27, 1980, INTERCOASTAL
 PROPERTY SERVICES, LLC, HOWARD
 BLITZ and TRACEY BLITZ, SIDNEY BLITZ
 individually and as trustee of the SID BLITZ,
 INC. PSP, Dr. DERALD E BRACKMANN and
 CHARLOTTE J BRACKMANN individually
 and as trustees of the BRACKMANN FAMILY
 TRUST, ROBERT BRETT, and CATHLEEN
 M. BRETT individually and as trustees of the
 ROBERT A. AND CATHLEEN M. BRETT
 1989 REVOCABLE TRUST, ROBERT
 BRETT as trustee of the GEORGE H. BRETT
 1989 REVOCABLE TRUST, and the
 THERESA S. BRETT 1988 REVOCABLE
 TRUST, GEORGE BRETT, THERESA A.
 BRETT, TERRY D. BULLER as trustee for
 the TERRY D. BULLER, P.C., MONEY

COMPLAINT FOR:

- (1) Aiding and Abetting Breach of Fiduciary Duty;
- (2) Aiding and Abetting Fraud;
- (3) Violation of Cal. Bus. & Prof. Code §17200 et. seq.,
- (4) Aiding and Abetting Violation of Cal. Bus. & Prof. Code §17200 et. seq.,
- (5) Violation of 18 USC §1961(c)(d) (RICO),
- (6) Violation of 18 USC §1961(d) (RICO),
- (7) Civil Conspiracy

DEMAND FOR JURY TRIAL

PRITIKIN v. COMERICA BANK ET. AL.
 COMPLAINT

1 PURCHASE PENSION TRUST, JON)
 2 FERRARA and ARLEAN FERRARA, an)
 3 individually and as trustees of the FERRARA)
 4 LIVING TRUST, HARRY S. GARTSMAN)
 5 and DOROTHY GARTSMAN individually)
 6 and as trustees of the GARTSMAN FAMILY)
 7 TRUST, DATED APRIL 12, 1990, STEVEN)
 8 GEVIRTZ, EDWIN J. HAGERTY,)
 9 RICHARD HORNSTROM, RICHH)
 10 LIMITED PARTNERSHIP, ROBERT)
 11 ISENBERG, JOSEPH R. JOHNSON and)
 12 ERNA M. JOHNSON, JEAN KAUTH)
 13 MCGRATH individually and as trustee of the)
 14 JEAN KAUTH MCGRATH TRUST,)
 15 PHYLLIS KLEIN, individually and as trustee)
 16 of the PHYLLIS KLEIN TRUST, KENNETH)
 17 KRAUS and PERRY GIBSON, individually)
 18 and as trustees of the KRAUS/GIBSON)
 19 REVOCABLE TRUST OF 1987, DAVID)
 20 LEON as trustee of the LEVEL 1)
 21 PROMOTION, INC. PROFIT SHARING)
 22 PLAN, FRANCIS MCGRATH individually)
 23 and as trustee of the FRANCIS MCGRATH)
 24 TRUST, RODNEY G. MINOTT individually)
 25 and as trustee of the RODNEY G. MINOTT,)
 26 JR. TRUST, as assignee of the POLLY)
 27 BERRY KENNEDY GST FBO RODNEY G.)
 28 MINOTT, and the FRANK KENNEDY)
 TRUST FBO RODNEY G. MINOTT, PAUL)
 NADEL, MICHAEL J. O'MALLEY,)
 JOHANNA PIPES, MONROE)
 ROSENTHAL, individually and as trustee of)
 the MONROE AND ANDREA N.)
 ROSENTHAL FAMILY)
 TRUST and the NOURAFCHAN)
 ROSENTHAL CHILDREN'S TRUST,)
 NICHOLAS ROTHENBERG)
 as trustee of the JANNOTTA)
 ROTHENBERG REVOCABLE TRUST,)
 SCHOENFELD PROPERTIES LLC, L.)
 KENNETH SCHOENFELD, and BEVERLY)
 SCHOENFELD, L. KENNETH)
 SCHOENFELD as trustee of the)
 IRREVOCABLE INTER VIVOS TRUST)
 FOR GREAT GRANDCHILDREN)
 OF RUTH CLAYBURGH FOR)

1 EDUCATIONAL PURPOSES, RICHARD
 2 ELDER, as trustee for the L.
 3 KENNETH AND BEVERLY ANN
 4 SCHOENFELD GRANDCHILDREN'S
 5 TRUST-DATED OCTOBER 1, 1989,
 6 and the KEN & BEVERLY
 7 SCHOENFELD IRREVOCABLE TRUST,
 8 DATED SEPTEMBER 2, 1986, ROBERT
 9 SCHOENFELD, MICHAEL SCHWARTZ
 10 and SHEILA SCHWARTZ, STERLING
 11 FURNITURE CORPORATION dba M.
 12 JACOBS FINE FURNITURE, CHARLES B.
 13 SCOTT as trustee of the SCOTT FAMILY
 14 TRUST DATED MARCH 1994, SAM
 15 SILVERBERG, ESTHER SILVERBERG,
 16 ROBERT SILVERBERG, MARGOT
 17 STRONG, ROBERT S. TOLL, MERRICK
 18 UNGAR, SCOTT UNGAR, STEVEN
 19 UNGAR and KAREN UNGAR, a married
 20 couple individually and as trustees of the
 21 UNGAR FAMILY INTERVIVOS
 22 REVOCABLE TRUST, CLIFF WARREN,
 23 RENEE WARREN, MARK
 24 WEINSTEIN individually and as trustee of the
 25 MJW INVESTMENTS PSP, 714-910 S. LOS
 26 ANGELES LLC, HI- DESERT MOBILE
 27 HOME PARK LIMITED PARTNERSHIP, as
 28 successor in interest of HI-DESERT MOBILE
 HOME PARK, LLC, KEVIN WISER,
 ALAN ALPERT, individually
 and as trustee of the ALAN
 ALPERT & SOPHIE ALPERT TRUST OF
 AUGUST 19, 1991, HARRY
 FAVERSHAM and SYLVIA FAVERSHAM,
 individually and as trustees
 of the HARRY & SYLVIA FAVERSHAM
 TRUST, RAFAEL SABAG, JULIE
 FRIEDMAN, individually and as
 trustee of the JEFF & JULIE
 FRIEDMAN FAMILY TRUST and as
 assignee for SAMANTHA FRIEDMAN
 and JESSICA FRIEDMAN, MERVIN
 KURTZMAN, JUDITH ROTHMAN ROFÉ,
 individually and as trustee of the
 ROFÉ/ROTHMAN FAMILY TRUST, as
 assignee of LEO ROFÉ and as custodian for

IAN ROFÉ, JEROME V. NAVARRA,
 NAVARRA MORENA PROPERTIES, LLC.
 a successor in interest to NAVARRA
 PROPERTIES, NAVARRA PROPERTIES
 BROADWAY, L.P., a successor in interest to
 NAVARRA PROPERTIES, NAVARRA
 PROPERTIES EC-SM, L.P., a
 successor in interest to NAVARRA
 PROPERTIES, JOHANNA PIPES FAMILY
 PARTNERSHIP II, L.P., as successor in
 interest to the JOHANNA PIPES FAMILY
 PARTNERSHIP, L.P., BERNARDO VIEW
 PROPERTIES, INC., JEROMES
 FURNITURE WAREHOUSE

Plaintiffs,
 vs.

COMERICA BANK, COMERICA
 INCORPORATED, DOES 1-100,
 CORPORATE DOES 101-110,

Defendants

The Plaintiffs in this action include the following:

- (1) Plaintiff ROBERT PRITIKIN, a citizen of the state of California.
- (2) Plaintiffs EARL O BENDER and JOAN C. BENDER, a married couple and citizens of the state of California, individually and as trustees of the BENDER FAMILY TRUST, dated JUNE 27, 1980.
- (3) Plaintiff INTERCOASTAL PROPERTY SERVICES, LLC, a California limited liability company, organized under the laws of the state of California, with its principal place of business in the state of California.

1 (4) Plaintiffs HOWARD BLITZ and TRACEY BLITZ, a married couple and citizens
2 of the state of California.

3 (5) Plaintiff SIDNEY BLITZ a citizen of the state of California, individually and as
4 trustee of the SID BLITZ, INC. PSP. Some or all of Plaintiff SIDNEY BLITZ's PSP
5 investments were rolled over into an Individual Retirement Account held at Smith Barney, which
6 investments Plaintiff is seeking to recover on behalf of his IRA.

7 (6) Plaintiffs Dr. DERALD E. BRACKMANN and CHARLOTTE J.
8 BRACKMANN, both individually and as trustees of the BRACKMANN FAMILY TRUST,
9 dated NOVEMBER 21, 1980 a California trust. Dr. BRACKMANN had a Profit PSP which
10 invested in Four Star. Those funds have been rolled over into his individual IRA. The name of
11 the IRA is RBC Capital Markets as Custodian for DEARELD E. BRACKMANN IRA. Plaintiff
12 is seeking to recover on behalf of said IRA.

13 (7) Plaintiffs ROBERT BRETT and CATHLEEN M. BRETT, a married couple and
14 citizens of the state of Washington, individually and as trustees of the ROBERT A. and
15 CATHLEEN M. BRETT 1989 REVOCABLE TRUST. Plaintiff ROBERT BRETT is also
16 appearing as trustee of the GEORGE H. BRETT 1989 REVOCABLE TRUST, and the
17 THERESA S. BRETT 1988 REVOCABLE TRUST.

18 (8) Plaintiff GEORGE BRETT, a citizen of the state of Kansas.

19 (9) Plaintiff THERESA A. BRETT, a citizen of the state of Washington.

20 (10) Plaintiff TERRY D. BULLER, a citizen of the state of California, as trustee
21 for the TERRY D. BULLER, P.C., MONEY PURCHASE PENSION TRUST.

22 (11) Plaintiffs JON FERRARA and ARLEAN FERRARA, a married couple and
23 citizens of the state of California, individually and as trustees of the FERRARA LIVING
24

1 TRUST.

2 (12) Plaintiffs HARRY S. GARTSMAN and DOROTHY GARTSMAN, a married
3 couple and citizens of the state of California, individually and as trustees of the
4 GARTSMAN FAMILY TRUST, DATED APRIL 12, 1990.
5

6 (13) Plaintiff STEVEN GEVIRTZ, a citizen of the state of California.

7 (14) Plaintiff EDWIN J. HAGERTY, a citizen of the state of Texas.

8 (15) Plaintiff RICHARD HORNSTROM, a citizen of the state of Florida.

9 (16) Plaintiff RICHH LIMITED PARTNERSHIP, a Florida limited partnership.
10

11 (17) Plaintiff ROBERT ISENBERG, a citizen of the state of California.

12 (18) Plaintiffs JOSEPH R. JOHNSON and ERNA M. JOHNSON, a married couple
13 and citizens of the state of California.

14 (19) Plaintiff JEAN KAUTH MCGRATH, a citizen of the state of California,
15 individually and as trustee of the JEAN KAUTH MCGRATH TRUST.
16

17 (20) Plaintiff PHYLLIS KLEIN, a citizen of the state of California, individually,
18 and as trustee of the PHYLLIS KLEIN TRUST.

19 (21) Plaintiffs KENNETH KRAUS and PERRY GIBSON, a married couple and
20 citizens of the state of California, both individually and as trustees of the KRAUS/GIBSON
21 REVOCABLE TRUST OF 1987.
22

23 (22) Plaintiff DAVID LEON, a citizen of the state of California, as trustee of the
24 LEVEL 1 PROMOTION, INC. PROFIT SHARING PLAN.

25 (23) Plaintiff FRANCIS MCGRATH, a citizen of the state of California, individually
26 and as trustee of the FRANCIS MCGRATH TRUST.
27

28 (24) Plaintiff RODNEY G. MINOTT, a citizen of the state of California,

1 individually and as trustee of the RODNEY G. MINOTT, JR. TRUST and as assignee of
2 the POLLY BERRY KENNEDY GST FBO RODNEY G. MINOTT, and the FRANK
3 KENNEDY TRUST FBO RODNEY G. MINOTT.

4 (25) Plaintiff PAUL NADEL, a citizen of the state of California.

5 (26) Plaintiff MICHAEL J. O'MALLEY, a citizen of the state of Florida.

6 (27) Plaintiff JOHANNA PIPES, a citizen of the state of California.

7 (28) Plaintiff MONROE ROSENTHAL, a citizen of the state of Wyoming,
8 individually and as trustee of the MONROE and ANDREA N. ROSENTHAL FAMILY
9 TRUST, and the NOURAFCHAN ROSENTHAL CHILDREN'S TRUST. Plaintiff
10 MONROE ROSENTHAL made some investments through his Individual Retirement Account
11 held by Lincoln Trust, and seeks to recover on behalf of his IRA.

12 (29) Plaintiff NICHOLAS ROTHENBERG, a citizen of the state of Oregon,
13 as trustee of the JANNOTTA ROTHENBERG REVOCABLE TRUST.

14 (30) Plaintiff SCHOENFELD PROPERTIES, LLC, a state of Washington Limited
15 Liability Company, organized under the laws of the state of Washington, with its principal
16 place of business in the state of Washington,

17 (31) Plaintiffs L. KENNETH SCHOENFELD, and BEVERLY A. SCHOENFELD, a
18 married couple and citizens of the state of Washington.

19 (32) Plaintiff L. KENNETH SCHOENFELD, a citizen of the state of Washington, as
20 trustee of the IRREVOCABLE INTER VIVOS TRUST FOR GREAT GRANDCHILDREN
21 OF RUTH CLAYBURGH FOR EDUCATIONAL PURPOSES.

22 (33). Plaintiff RICHARD ELDER, a citizen of the state of Washington, as trustee for
23 the L. KENNETH AND BEVERLY ANN SCHOENFELD GRANDCHILDREN'S TRUST-
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1 DATED OCTOBER 1, 1989, and the KEN & BEVERLY SCHOENFELD IRREVOCABLE
2 TRUST, DATED SEPTEMBER 2, 1986.

3 (34) Plaintiff ROBERT SCHOENFELD, a citizen of the state of Washington.

4 (35) Plaintiffs MICHAEL SCHWARTZ and SHEILA SCHWARTZ, a married
5 couple and citizens of the state of Oregon.
6

7 (36) Plaintiff STERLING FURNITURE CORPORATION dba M. JACOBS FINE
8 FURNITURE, an Oregon corporation, organized under the laws of the state of Oregon, with its
9 principal place of business in the state of Oregon.
10

11 (37) Plaintiff CHARLES B. SCOTT, a citizen of the state of California, as
12 trustee of the SCOTT FAMILY TRUST DATED MARCH 1994.

13 (38) Plaintiff SAM SILVERBERG, a citizen of the state of California.

14 (39) Plaintiff ESTHER SILVERBERG, a citizen of the state of California.

15 (40) Plaintiff ROBERT SILVERBERG, a citizen of the state of California.

16 (41) Plaintiff MARGOT STRONG, a citizen of the state of California.

17 (42) Plaintiff ROBERT S. TOLL, a citizen of the state of California.

18 (43) Plaintiff MERRICK UNGAR, a citizen of the state of Texas.

19 (44) Plaintiff SCOTT UNGAR, a citizen of the state of Texas.

20 (45) Plaintiffs STEVEN UNGAR and KAREN UNGAR, a married couple and
21 citizens of the state of Texas, individually and as trustees of the UNGAR FAMILY
22

23 INTERVIVOS REVOCABLE TRUST.

24 (46) Plaintiffs CLIFTON WARREN a citizen of the state of California.

25 (47) Plaintiff MARK WEINSTEIN, a citizen of the state of California, individually
26 and as trustee of the MJW INVESTMENTS PSP.
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1 (48) Plaintiff 714-910 S. LOS ANGELES LLC, a state of California Limited
2 Liability Company, organized under the laws of the state of California, with its principal
3 place of business in the state of California.

4 (49) Plaintiff HI-DESERT MOBILE HOME PARK LIMITED PARTNERSHIP, a
5 state of California Limited Partnership, organized under the laws of the state of California,
6 with its principal place of business in the state of California, as successor in interest of HI-
7 DESERT MOBILE HOME PARK, LLC.

8 (50) Plaintiff KEVIN WISER, a citizen of the state of California.

9 (51) Plaintiff ALAN ALPERT, a citizen of the state of California, individually and
10 as trustee of the ALAN ALPERT & SOPHIE ALPERT TRUST OF AUGUST 19, 1991.

11 (52) Plaintiff HARRY FAVERSHAM and SYLVIA FAVERSHAM, a married
12 couple and citizens of the state of California, individually and as trustees of the HARRY and
13 SYLVIA FAVERSHAM TRUST.

14 (53) Plaintiff RAFAEL SABAG, a citizen of the state of California.

15 (54) Plaintiff JULIE FRIEDMAN, a citizen of the state of California, individually
16 and as trustee of the JEFF & JULIE FRIEDMAN FAMILY TRUST, and as assignee for
17 SAMANTHA FRIEDMAN and JESSICA FRIEDMAN.

18 (55) Plaintiff MERVIN KURTZMAN a citizen of the state of California. Plaintiff
19 MERVIN KURTZMAN made some investments through his Individual Retirement Account
20 held by City National Bank, and seeks to recover on behalf of his IRA.

21 (56) Plaintiff RENEE WARREN a citizen of the state of California.

22 (57) Plaintiff JUDITH ROTHMEN ROFÉ, a citizen of the state of California,
23 individually and as trustee of the ROFÉ/ROTHMAN FAMILY TRUST, as assignee of
24

1 LEO ROFÉ and as custodian, pursuant to the California Uniform Transfer to Minors
2 Act, for IAN ROFÉ. Plaintiff ROFÉ is also seeking to recover investments on behalf of her
3 Individual Retirement Account: First Regional Bank Cust. FBO Judith Rothman, c/o Polycomp
4 Self Directed IRA, and on behalf of her husband PETER ROFÉs Individual Retirement
5 Account: First Regional Bank Cust. FBO Peter Rofè, c/o Polycomp Self Directed IRA, which
6 is community property.
7

8 (58) Plaintiff JEROME V. NAVARRA a citizen of the state of California.

9 (59) Plaintiff NAVARRA MORENA PROPERTIES, LLC. a state of California
10 Limited Liability Company, organized under the laws of the state of California, with its
11 principal place of business in the state of California, as a successor in interest to NAVARRA
12 PROPERTIES.
13

14 (60) Plaintiff NAVARRA PROPERTIES BROADWAY, L.P., a state of California
15 Limited Partnership, organized under the laws of the state of California, with its
16 principal place of business in the state of California, as a successor in interest to NAVARRA
17 PROPERTIES.
18

19 (61) Plaintiff NAVARRA PROPERTIES EC-SM, L.P., a state of California
20 Limited Partnership, organized under the laws of the state of California, with its
21 principal place of business in the state of California, as a successor in interest to NAVARRA
22 PROPERTIES.
23

24 (62) Plaintiff JOHANNA PIPES FAMILY PARTNERSHIP II, L.P. a state of
25 California Limited Partnership, organized under the laws of the state of California, with its
26 principal place of business in the state of California, as successor in interest to the JOHANNA
27 PIPES FAMILY PARTNERSHIP, L.P.
28

(63) Plaintiff BERNARDO VIEW PROPERTIES, INC., a California corporation, organized under the laws of the state of California, with its principal place of business in the state of California.

(64) Plaintiff JEROMES FURNITURE WAREHOUSE, a California corporation, organized under the laws of the state of California, with its principal place of business in the state of California.

The Plaintiffs hereby allege as follows:

DEFENDANTS

1. Defendant COMERICA BANK is a Texas corporation, with corporate headquarters located in Dallas, Texas. Plaintiffs are informed and believe and thereon allege that COMERICA BANK is a subsidiary of Defendant COMERICA INCORPORATED, a publicly-traded Delaware corporation with corporate headquarters located in Dallas, Texas. COMERICA INCORPORATED is a financial holding company that has operations in Business Banking, Retail Banking and Wealth & Institutional Management. COMERICA BANK divides its activities in the United States into geographical regions, including a region called "Western Market", which region includes California. The headquarters of COMERICA BANK's Western Market are located in San Jose, California. COMERICA INCORPORATED and COMERICA BANK and their banking activities are, and were at all times relevant to this Complaint, subject to the jurisdiction of the laws and regulations of the State of California and the Federal Deposit and Insurance Corporation.

2. Plaintiffs do not know the true names and capacities of those Defendants sued herein as DOES 1-100, inclusive, and therefore sue these defendants by such fictitious names.

1 Plaintiffs will amend this Complaint to allege their true names and capacities when ascertained.
2 Upon information and belief, each Defendant sued under such fictitious names is in some manner
3 responsible for the wrongs and damages as alleged below, and in so acting was functioning as the
4 agent, servant, partner and/or employee of the co-Defendants, and in doing the actions mentioned
5 below, was acting within the course and scope of his or her authority as such agent, servant,
6 partner, and/or employee with the permission and consent of the co-Defendant.
7

8 3. Plaintiffs do not know the true names, jurisdictions or principal places of business
9 of business entities sued herein as DOES 101-110, inclusive, and therefore sue these defendants
10 by such fictitious names. Plaintiffs will amend this Complaint to allege their true names,
11 jurisdictions and principal places of business when ascertained. Upon information and belief,
12 each Defendant sued under such fictitious names is a predecessor, successor, parent, subsidiary,
13 and/or affiliate of COMERICA INCORPORATED and/or COMERICA BANK. The term
14 "COMERICA" as used throughout this Complaint shall refer, collectively, to COMERICA
15 INCORPORATED, COMERICA BANK and DOES 101-110.
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18 4. Plaintiffs are informed and believe, and on that basis allege, that at all times herein
19 mentioned, each of the Defendants was the agent and/or employee of each of the remaining
20 Defendants, and in doing the things hereinafter alleged, was acting within the course and scope of
21 such agency and/or employment, and that all Defendants acted at all times with the knowledge of
22 the actions of each of the remaining Defendants, and/or said acts were subsequently ratified by
23 each of the remaining Defendants.
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VENUE

5. Defendant COMERICA's headquarters for its Western Region including California is at 333 West Santa Clara Street, San Jose, CA 95113. The United States District Court of the Northern District of California is the proper venue pursuant to 28 U.S.C.A. §1391(b)(c) and 18 U.S.C.A. §1965(a).

GENERAL ALLEGATIONS

Introductory Statement

6. Four Star Financial Services, LLC ("**Four Star**") was engaged in a Ponzi scheme (hereinafter, the "**Four Star Ponzi Scheme**") during the period from approximately December 1999 through approximately October 2002. Four Star would not have been able to operate the Four Star Ponzi Scheme but for the active and knowing cooperation and assistance of COMERICA and DOES 1-100, inclusive, as hereinafter alleged.

7. Four Star maintained its checking account at COMERICA. Between approximately December 1999 and April 2000, several creditors of Four Star obtained judgments and prejudgment writs of attachment totaling several million dollars. In order to enable Four Star to avoid paying these creditors, COMERICA allowed Four Star to maintain a negative balance in its checking account on most banking days. It was not unusual for this daily negative balance to average several hundreds of thousands of dollars in a given month. COMERICA arranged for Four Star's cash to be held in non-Four Star accounts where Four Star's creditors couldn't reach it. The principal non-Four Star account used for this purpose was a personal line of credit, believed to be unsecured, that COMERICA had issued to Ronald Anson ("Anson") and Jack Garrett ("Garrett"), two of Four Star's principals (hereinafter referred to as the "Anson/Garrett

1 **Line of Credit**"). On a typical day, COMERICA would allow Four Star to move just enough
2 funds from these non-Four Star accounts into the Four Star checking account to cover that day's
3 checks, leaving the account balance at zero or near zero at the end of the day. In this way, Four
4 Star was able to write checks to Plaintiffs for regular distribution payments on their investments,
5 thus fraudulently maintaining an illusion of its profitability, even though Four Star was actually
6 insolvent. Using this process, Four Star defrauded Plaintiffs of approximately \$50 million.
7 COMERICA's conduct, as hereinafter alleged, violated, inter alia, the California Uniform
8 Fraudulent Transfer Act, federal banking regulations, its own internal procedures and guidelines,
9 and good banking practices.
10
11

12 **Overview**

13 8. Four Star was formed on April 12, 1996. At all times relevant to this Complaint,
14 Four Star was managed by Mark Cohn ("**Cohn**"), Anson and Garrett (hereinafter collectively
15 referred to as the "**Four Star Managers**"). At all times relevant to this Complaint, Cohn was an
16 attorney admitted to practice law in the State of California, and served as corporate counsel for
17 Four Star. At all times relevant to this Complaint, Garrett and Anson were Certified Public
18 Accountants licensed to practice accounting in the State of California, and doing business as
19 Anson, Garrett & Company.
20

21 9. Plaintiffs were investors in Four Star during the period from about December 1999
22 through approximately October 2002 (hereinafter referred to as the "**Loss Period**").
23

24 10. During the Loss Period, Plaintiffs invested approximately \$50 million in Four Star
25 (hereinafter referred to as the "**Loss Period Investments**").
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1 11. Plaintiffs made the Loss Period Investments in reliance on representations made to
2 Plaintiffs by Four Star and the Four Star Managers that Four Star was a highly profitable
3 enterprise that offered safe investments and lucrative returns to its investors.

4
5 12. In addition, throughout the Loss Period, Four Star maintained a practice it had
6 followed since its inception of regularly paying monthly distributions to its investors. The regular
7 payment of monthly distributions was itself a representation by Four Star to Plaintiffs that Four
8 Star was financially sound and solvent, because Plaintiffs' investments in Four Star had been
9 made pursuant to written investment documents which, by their express terms, provided that
10 distributions to investors would be paid only from available cash flow generated by Four Star's
11 investments. As such, the payment of regular monthly distributions constituted a continuing
12 representation by Four Star to Plaintiffs that Four Star's investments were continuing to generate
13 sufficient cash flow to allow for the continued payment of distributions in accordance with the
14 investment documents.

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17 13. The truth, as was actually known by Four Star and the Four Star Managers, was
18 that throughout the Loss Period, Four Star was insolvent. Its investments were generating
19 insufficient revenue to pay even its immediate creditor obligations. Four Star was only
20 maintaining its operations by virtue of Four Star's receipt of large sums of new investment capital
21 during the Loss Period. A total of approximately \$129 million of new investment capital, which
22 sum included the approximately \$50 million of Loss Period Investments made by Plaintiffs, was
23 received by Four Star during the Loss Period. Plaintiffs are informed and believe and thereon
24 allege that virtually none of this \$129 million was actually invested by Four Star in any legitimate
25 investments, but that instead, Four Star simply banked these funds and then immediately turned
26 around and used these same monies to fund the monthly distributions that Four Star had always
27
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1 made to its investors, including Plaintiffs, under the guise of being “returns” on investment.
2 Plaintiffs, believing that the distributions they were receiving during the Loss Period constituted
3 evidence of Four Star’s continued financial solvency and good health, responded by investing
4 even more of their money with Four Star, until finally they had invested the full \$50 million of
5 Loss Period Investments during the Loss Period.
6

7 14. In or about October 2002, i.e., at the close of the Loss Period, Four Star finally ran
8 out of cash to continue making monthly distributions to Plaintiffs. When this happened, Plaintiffs
9 immediately suspected that Four Star was in financial trouble, and Plaintiffs immediately stopped
10 making new investments in Four Star. Without new investment capital, Four Star ceased
11 operations.
12

13 15. In October 2003, Four Star was placed into involuntary bankruptcy by its
14 creditors. On November 21, 2008, in an adversary proceeding in the Four Star bankruptcy,
15 *Richard A. Marshack, Solely in his Capacity as the Chapter 7 Trustee v. David Roberts*, U.S.
16 Bankruptcy Court, Central District of California, Case No. LA 03-37579TD, the court found
17 that Four Star was a Ponzi scheme from January 1, 2000 to December 31, 2002. A Ponzi
18 scheme is a per se fraudulent business practice.
19

20 16. As alleged in detail below, Four Star would not have been able to operate the Four
21 Star Ponzi Scheme during the Loss Period without the material assistance of COMERICA. Four
22 Star used accounts maintained at COMERICA, including Four Star’s checking account and at
23 least two non-Four Star accounts, e.g., the Anson/Garrett Line of Credit and a bank account in the
24 name of FSF, LLC, an entity which was controlled by the Four Star Managers and had been set up
25 solely to hold Four Star funds, to move Four Star’s funds instantaneously between the Four Star
26 checking account and these non-Four Star accounts during the Loss Period. This movement of
27
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1 funds between the Four Star checking account and the non-Four Star accounts was part of a
2 strategy implemented jointly by Four Star and COMERICA that was designed to hinder the
3 ability of Four Star's creditors, including creditors holding millions of dollars of judgment writs
4 and prejudgment writs of attachment against Four Star, from reaching Four Star's cash assets. At
5 the same time, this scheme allowed Four Star immediate access to its cash so that it could pay
6 from its checking account at COMERICA the distribution checks it wrote on a monthly basis to
7 Plaintiffs. This allowed Four Star to continue to maintain the illusion to Plaintiffs that Four Star
8 was a profitable and financially sound business.
9

10
11 17. The foregoing creditor avoidance mechanism worked as designed: Although Four
12 Star creditors holding writs repeatedly levied Four Star's COMERICA accounts during the Loss
13 Period, these levies were largely unsuccessful in attaching funds, despite the fact that Four Star
14 regularly used its COMERICA checking account to clear millions of dollars of checks to Plaintiffs
15 and other investors every month during this same period.
16

17 18. As hereinafter explained, if Four Star had been unable to execute the foregoing
18 creditor avoidance mechanism during the Loss Period, Four Star would have been unable to
19 continue making regular monthly distribution payments to Plaintiffs. Had that occurred, Plaintiffs
20 would not have lost any of the funds they are seeking as damages in this action.
21

22 **COMERICA's Role in Concealing Four Star's Cash From Its Creditors**

23 19. The genesis of COMERICA's role in the Four Star Ponzi Scheme began no later
24 than approximately mid-1999 when Richard Smith ("**Smith**"), then a Vice President of
25 COMERICA, arranged for COMERICA to issue to Garrett and Anson a personal multi-million
26 million line of credit (hereinafter the "**Anson/Garrett Line of Credit**").
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1 20. Anson and Garrett were Smith's personal accountants and had prepared his tax
2 returns for many years. Consequently, Smith's active involvement in arranging a loan from
3 COMERICA to Anson and Garrett violated conflict of interest rules as set forth both in federal
4 banking regulations and good banking practices and, on the basis of information and belief,
5 COMERICA's own banking guidelines.
6

7 21. Plaintiffs are informed and believe and thereon allege that Smith, in arranging for
8 the loan, was returning a favor to Anson and Garrett. As Smith's personal accountants, Anson
9 and Garrett had given Smith approximately \$750,000 in fraudulent tax losses for a general partner
10 interest that Smith purchased from them in a company called Phoenix Hotel Associates, Ltd.
11 Anson pled guilty to federal tax fraud charges arising from that scheme. Plaintiffs are informed
12 and believe and thereon allege that Garrett also pled guilty to federal tax fraud charges in
13 connection with said scheme.
14

15 22. Plaintiffs are informed and believe and thereon allege that Smith had a financial
16 incentive to arrange for the issuance of the Anson/Garrett Line of Credit because COMERICA
17 had instituted a lucrative bonus program to its loan officers, such that Smith's compensation
18 increased by making the loan.
19

20 23. Although the Anson/Garrett Line of Credit was set up solely as a personal line of
21 credit for Anson and Garrett, Plaintiffs are informed and believe and thereon allege that at all
22 times relevant to this Complaint, Smith knew and understood that the intended use of funds from
23 the Anson/Garrett Line of Credit would be to finance Four Star operations, and that the intended
24 source of repayment of the Anson/Garrett Line of Credit was cash flow from Four Star operations.
25 Indeed, Plaintiffs are informed and believe and thereon allege that, on the basis of the personal
26 financial statements of Anson and Garrett that were submitted to COMERICA in connection with
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1 the Anson/Garrett Line of Credit, Anson and Garrett had no potential source of cash flow that
2 would be even remotely sufficient to service a \$4.5 million line of credit apart from anticipated
3 cash flow from Four Star operations. Despite these facts, Smith deliberately kept Four Star off the
4 loan; Four Star was neither a borrower nor a guarantor of the Anson/Garrett Line of Credit.
5 Nevertheless, payments made to COMERICA on the Anson/Garrett Line of Credit came directly
6 from Four Star accounts, including Four Star's checking account at COMERICA.
7

8 24. Plaintiffs allege that COMERICA had actual knowledge that Four Star funds,
9 including investor capital invested by Plaintiffs, was the source of repayment of interest and
10 principal owed to COMERICA by Anson and Garrett on the Anson/Garrett Line of Credit.
11

12 25. The issuance of the Anson/Garrett Line of Credit under the above circumstances
13 meant that COMERICA had no creditor rights to look to Four Star's assets for repayment, even
14 though the Anson/Garrett Line of Credit was underwritten based on Four Star's cash flow and was
15 intended for Four Star's use. Under these circumstances, the loan, as written, violated ordinary
16 banking practices. Plaintiffs are informed and believe and thereon allege that the loan, as written,
17 also violated federal banking regulations and COMERICA's own banking guidelines.
18

19 26. Despite these facts, Smith had a good reason to keep Four Star off the loan:
20 Although Four Star maintained its business checking account with COMERICA (hereinafter the
21 "Four Star Comerica Account"), COMERICA had recently refused to give a line of credit to
22 Four Star because Four Star was involved in "adult" businesses, and COMERICA did not want to
23 be identified as a lender to that type of business. Smith knew that if Four Star were on the loan,
24 the loan wouldn't be approved.
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1 27. Plaintiffs are informed and believe that Smith knew about the loan irregularities
2 on the Anson/Garrett Line of Credit and knowingly ignored them for the reasons set forth in
3 paragraphs 21 and 22.

4 28. In approximately December 1999, Four Star was looking for a way to conceal its
5 funds from an onslaught of creditor attacks so that the funds could remain available to Four Star to
6 continue to pay monthly investor distribution checks to its investors. The continued payment of
7 distribution checks was essential in order to continue to sustain the illusion of Four Star's
8 profitability and thus assure the continued inflow of new investor capital.

9 29. From its inception in 1996, Four Star had always paid regular investor
10 distributions, a practice that had generated investor confidence and a continuous inflow of new
11 investor capital. Indeed, Four Star's principal attraction to investors was that its investments were
12 so successful that investors could expect distributions every month, like clockwork. But by
13 December 1999 Four Star's investments had gone bad, and Four Star didn't have sufficient
14 resources to pay its creditors and make investor distributions. The only way that Four Star could
15 continue to pay investor distributions was to use new investor capital which is the very definition
16 of the classic Ponzi scheme. This is what Four Star proceeded to do.

17 30. An immediate threat was posed to the Four Star Ponzi Scheme when, beginning in
18 or about December 1999, several creditors obtained judgments and/or prejudgment writ of
19 attachments against Four Star totaling several hundred of thousands of dollars. In April 2000, a
20 judgment of approximately \$2.2 million was entered against Four Star in favor of Sentinel Trust.
21 These creditors actively sought to enforce their execution writs and/or prejudgment writs of
22 attachment (collectively hereinafter the "**Creditor Writs**") against Four Star's bank accounts.
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1 31. In order to maintain its ability to operate in the face of the Creditor Writs, and in
2 particular to be able to continue making regular investor distributions so as to maintain the
3 pipeline of new investor capital that was the lifeblood of the company, Four Star needed a
4 mechanism that would make its funds available to cover the checks it wrote to its investors while
5 preventing the Creditor Writs from reaching these funds.
6

7 32. At the same time, by December 1999, the Four Star Managers, COMERICA and
8 Smith each had actual knowledge of the following information:

- 9 (a) The only potentially available source of cash flow for repaying the
10 Anson/Garrett Line of Credit was from operations of Four Star.
11
12 (b) Without regular new capital investments from Four Star investors, Four
13 Star would not have the funds available to repay the Anson/Garrett Line of
14 Credit.
15
16 (c) Four Star was dependent upon the continuous inflow of new investor
17 capital every month in order to fund its operations and remain in business.
18
19 (d) Investors would continue to invest new capital only so long as Four Star
20 could maintain the confidence of its investors by adhering to its long-
21 standing practice of making distributions to investors on a regular basis.
22
23 (e) If Four Star were to be unable to make its regularly scheduled investor
24 distribution payments for even a single month, the inflow of new investor
25 capital would likely stop due to a loss of investor confidence, resulting in
26 Four Star's financial collapse.
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1 (f) Four Star was insolvent and had substantial creditor obligations, including
2 the Creditor Writs, that could not be satisfied without materially interfering
3 with Four Star's ability to make investor distributions.

4 (g) The Four Star creditors holding judgments and/or prejudgment writs of
5 attachment had no creditor rights against Anson or Garrett individually, as
6 the judgments and/or writs were against Four Star alone.

7
8 33. Taking into account the above facts, Four Star and COMERICA devised a
9 mechanism (hereinafter referred to as the "**Banking Scheme**") that would make Four Star's funds
10 available to cover checks to its investors while preventing the Creditor Writs from reaching those
11 funds. The key to the Banking Scheme was the manipulation of Four Star's checking account at
12 COMERICA (hereinafter referred to as the "**Four Star Comerica Account**") in order to make
13 funds available to cover checks written on the account while preventing Creditor Writs from
14 reaching the funds. This manipulation was performed through the following components:
15

16 (a) **The Negative Balance:** On most banking days during the period from
17 approximately December 1999 until Four Star ceased making investor
18 distributions in or about October 2002, the Four Star Comerica Account
19 began the day with a negative account balance as a result of the fact that
20 the amount of all checks posted to the account during the previous night
21 exceeded the prior day's ending balance. The negative balance served the
22 critical function of preventing creditors from reaching Four Star's funds:
23 Since a writ only reaches the funds in an account when the writ is levied,
24 any Creditor Writs levied on the Four Star Comerica Account on a day
25 where the account began with a negative balance did not reach any funds,
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1 and COMERICA would respond to the writ by advising that no funds were
2 in the account. This scenario occurred repeatedly during the above period
3 of time.

4
5 (b) **The Cash Report:** On banking days during the period from approximately
6 December 1999 until Four Star ceased making investor distributions in or
7 about October 2002, Four Star prepared a report called a Cash Report
8 which showed the exact amount that needed to be deposited into the Four
9 Star Comerica Account to clear all the checks that were posted during the
10 previous night.

11
12 (c) **Covering the Overdraft:** Using the information from the Cash Report,
13 Four Star usually transferred just enough funds into the Four Star
14 Comerica Account each day to eliminate the overdraft. The funds were
15 transferred from a non-Four Star account, usually the Anson/Garrett Line
16 of Credit. Sometimes the funds would come from an account at
17 COMERICA in the name of another company controlled by the Four Star
18 Managers. Sometimes the funds would be wired in. Once the funds were
19 deposited into the Four Star Comerica Account, they would instantly be
20 applied to the overdraft and disappear from the account, leaving the
21 account balance at zero or near zero and thus once again immune from
22 attacks by Creditor Writs.

23
24
25 (d) **Instant Transfer of Other Deposits:** Checks from investors and other
26 deposits into the Four Star Comerica Account that weren't needed to cover
27 an overdraft on that day were generally transferred out immediately, before
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1 they were even "collected". That is, when a check drawn on an account
2 from another bank was deposited into the Four Star Comerica Account, the
3 funds from the other account would ordinarily not be transferred to
4 COMERICA for credit to the Four Star Comerica Account for several
5 banking days. However, COMERICA would generally credit the Four
6 Star Comerica Account with the funds immediately and then transfer the
7 funds out of the account, leaving the account balance once again at zero or
8 near zero and thus immune from attacks by Creditor Writs. Usually, the
9 funds went to reduce the Anson/Garrett Line of Credit. Sometimes the
10 funds went to an account at COMERICA in the name of another company
11 controlled by Four Star's principals.
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14 34. Thus, by starting almost every day with a negative balance in the Four Star
15 Comerica Account, depositing only enough funds to cover the overdraft, and having COMERICA
16 quickly transfer out other deposits to non-Four Star accounts even before the funds had been
17 "collected", Four Star was able to maintain control over the use of its funds despite millions of
18 dollars of unpaid creditor obligations and repeated levies of Creditor Writs.
19

20 35. The practice of starting the day with a negative balance in the Four Star Comerica
21 Account also allowed Four Star, with COMERICA's cooperation, to control which checks were
22 paid and which checks were returned on days where Four Star did not have sufficient funds
23 available to clear all checks that had been presented for payment the previous night. Plaintiffs are
24 informed and believe and thereon allege that this practice, which occurred on occasion during the
25 period in question, i.e., approximately December 1999 through October 2002, was a violation of
26 ordinary banking practices as well as COMERICA's own operational guidelines.
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1 36. As a proximate result of the Banking Scheme, COMERICA materially assisted
2 Four Star in perpetuating the illusion of a profitable business to its investors, even though it was
3 insolvent.

4
5 37. Plaintiffs are informed and believe and thereon allege that throughout the Loss
6 Period COMERICA and Smith willingly and knowingly assisted Four Star in the implementation
7 and facilitation of the Banking Scheme.

8 38. Based on the facts of which COMERICA had actual knowledge as alleged above,
9 throughout the Loss Period COMERICA and Smith had actual knowledge that Four Star was
10 insolvent.

11
12 39. Plaintiffs are informed and believe and thereon allege that COMERICA and Smith
13 also had actual knowledge throughout the Loss Period of Four Star's insolvency because, during
14 said period, COMERICA and Smith regularly reviewed Four Star's financial statements as well as
15 back-up documentation for said financial statements, which documentation disclosed the insolvent
16 condition of Four Star. On information and belief, during said period, COMERICA and Smith
17 reviewed certain international bank guarantees on which Four Star was attempting to rely as an
18 essential part of its overall financial solvency plan. As a result of said review, upon information
19 and belief COMERICA and Smith concluded that said guarantees were fraudulent and that Four
20 Star was, therefore, insolvent.

21
22 40. COMERICA and Smith conspired with the Four Star Managers to implement the
23 Banking Scheme because COMERICA and Smith had concluded, on the basis of the information
24 described in Paragraph 32 above, that the Banking Scheme, by enabling Four Star to continue
25 operating notwithstanding its insolvent condition, provided the only possible way to prevent
26 Anson and Garrett from defaulting on the terms of the Anson/Garrett Line of Credit.
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1 COMERICA and Smith knew from the financial statements that Anson and Garrett had submitted
2 in support of the loan that if Four Star ceased operations, Anson and Garrett would have no ability
3 to make payments on the terms and conditions of the line of credit.

4
5 41. Had Anson and Garrett defaulted on the line of credit for a period of 90 days,
6 under federal regulations the loan would be deemed a nonaccrual loan and Comerica would
7 have been required to discontinue accruing income on the loan. Both COMERICA and Smith
8 had strong motivations not to allow this event to occur.”

9
10 42. Smith had personal reasons not to allow the Anson/Garrett Line of Credit to
11 become a nonaccrual loan. First, the default of a multimillion dollar loan which Smith had
12 personally arranged would constitute a blemish on Smith’s professional career as a banking
13 officer. More significantly, if the loan could be retired without going into default, the facts that
14 Smith had violated conflict of interest rules in arranging for a loan for business associates, and that
15 the loan had violated good banking practices, federal loan regulations, and COMERICA’s internal
16 loan guidelines, might never come to light.

17
18 43. COMERICA had financial reasons not to allow the Anson/Garrett Line of
19 Credit to become a nonaccrual loan. First, continuing to accrue income on assets which are in
20 default as to principal and interest overstates a bank’s assets, earnings and capital. A bank’s
21 quarterly report to federal regulators, known as a Call Report, requires that accrual of income
22 be discontinued unless the asset is well secured and in process of collection. Second, banks are
23 required to disclose their nonaccrual loans as nonperforming assets in their financial statements
24 and quarterly reports to federal regulators.

25
26 44. Moreover, COMERICA profited from the Banking Scheme. The Banking
27 Scheme enabled Four Star to pay tens of millions of dollars to COMERICA, money which Four
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Star would not have been able to pay to COMERICA but for the Banking Scheme. These payments were used by COMERICA, in part, to pay down the outstanding balance owed to COMERICA on the Anson/Garrett Line of Credit and to pay accrued interest to COMERICA on that outstanding balance. At all times relevant to this Complaint, COMERICA had actual knowledge that payments which were made against the outstanding balance and accrued interest owed by Anson and Garrett to COMERICA on the Anson/Garrett Line of Credit were made by Four Star using funds which included Plaintiffs' investments in Four Star. At all times relevant to this Complaint, COMERICA had actual knowledge that Four Star had no obligation to COMERICA regarding the Anson/Garrett Line of Credit, such that payments made by Four Star to COMERICA on the Anson/Garrett Line of Credit constituted the conversion of Four Star funds in violation of the Four Star Managers' fiduciary duty to Plaintiffs.

The Doctrines of Equitable Tolling and Equitable Estoppel Apply Because, Prior to October 2008, Plaintiffs Did Not Know and Could Not Have Known by the Exercise of Reasonable Diligence of the Existence of the Banking Scheme or of COMERICA's Role in the Four Star Ponzi Scheme

45. Prior to terminating investor distributions in or about October 2002, the Four Star Managers sought to maintain the Four Star Ponzi Scheme through a variety of means in addition to the Banking Scheme. The Four Star Managers created a series of complex transactions through attorney trust accounts and shell corporations to transfer money in and out of Four Star, which created the illusion of legitimate economic activity and prevented Plaintiffs from discovering that the primary source of investor distribution payments was the investments themselves. These activities also included the formation of FSF, LLC, a subsidiary of Four Star, which was created solely to set up a bank account in the name of an entity other than Four Star so that Four Star could deposit funds in that account that could not be reached by Four Star's judgment creditors. The Four Star Managers produced fraudulent financial statements for Four Star that concealed

1 material facts about the true financial condition of Four Star and falsely represented that Four Star
2 had sufficient income and assets to support its ongoing operations and investor distributions. For
3 example, the financial statements listed as assets of the company the full face value of millions of
4 dollars of receivables that the Four Star Managers knew were largely or entirely uncollectible, and
5 listed tangible assets of the company at the full face value of appraisals, which appraisals the Four
6 Star Managers knew substantially overvalued the assets. Four Star also artificially controlled its
7 bad debt write offs for many years. Further, as a result of Anson and Garrett's experience in
8 managing their clients' assets through the operation of other multi-million dollar investment
9 entities as previously alleged, Plaintiffs and other Four Star investors accepted without suspicion
10 the representations of the Four Star Managers as to the financial performance and condition of
11 Four Star. However, none of the foregoing efforts by the Four Star Managers would have been
12 sufficient to maintain the Four Star Ponzi Scheme without the ability to make regular monthly
13 investor distributions. It was the making of these regular investor distributions that ultimately
14 gave Plaintiffs and the other investors the necessary assurance that Four Star was solvent and
15 profitable, in that, by the terms of the written investment agreements with Plaintiffs, investor
16 distributions could only be made if there was adequate cash flow to do so after meeting Four
17 Star's obligations. It was Four Star's continued ability to make regular monthly investor
18 distributions, notwithstanding its continuous insolvency, that was the key to inducing Plaintiffs
19 and other investors to continue making new capital investments in Four Star during the period
20 between approximately December 1999 and October 2002. Four Star would not have been able to
21 make regular monthly investor distributions during this period but for the material and knowing
22 assistance and active participation of COMERICA as hereinafter alleged.
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1 46. After Four Star stopped making investor distributions in or about October 2002,
2 Four Star and the Four Star Managers attempted to mollify investor anxiety through written and
3 oral communications, made via the mail and interstate wires, to Plaintiffs and other investors. In
4 these communications, Four Star and the Four Star Managers characterized the termination as
5 merely a temporary suspension in investor distributions, and they attributed the situation to an
6 unforeseen delay in the completion of the sale of certain Four Star assets that had not previously
7 been disclosed to Plaintiffs, i.e., receivables factoring contracts involving South American
8 telecommunications services.

9
10 47. Over the next 14 months, Four Star and the Four Star Managers sought to deflect
11 growing investor concern over the safety of Four Star's investments by making periodic written
12 disclosures to the investors via mail of the details of new "developments" in the ongoing saga of
13 the stalled sale transaction. According to the disclosures made by Four Star and the Four Star
14 Managers, the delay in completing the sale was due to the fact that the contract sale proceeds had
15 been paid to Four Star in the form of Argentine government bonds, which Four Star had then been
16 unable to sell due to the banking crisis that was then ongoing in Argentina. In the periodic
17 disclosures to investors, Four Star and the Four Star Managers explained they were working with
18 South American legal counsel in order to comply with complex new Argentine banking
19 regulations that required Four Star to exchange the bonds for newly issued government bonds that
20 could then be sold on a bond market. As part of the disclosures to investors, Four Star and the
21 Four Star Managers produced documentation of the transaction that appeared to attest to its
22 legitimacy. In fact, the entire scenario was a fraud. There had been no Latin American
23 receivables factoring contracts, and the "Argentine government bonds" were forgeries that Four
24 Star and the Four Star Managers had acquired from South American con artists in a desperate
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1 attempt to generate additional funds to continue the Four Star Ponzi Scheme. The periodic reports
2 and disclosures made by Four Star and the Four Star Managers to Plaintiffs and the other investors
3 had the effect of inducing Plaintiffs and the other investors to refrain from taking any legal action
4 to recover their investments prior to October 24, 2003, when Four Star was placed in involuntary
5 bankruptcy under Chapter 11 of the Bankruptcy Code, *In re Four Star Financial Services, LLC*,
6 *Debtor*, U.S. Bankruptcy Court, Central District of California, Case No. LA 03-37579 TD.

8 48. On March 17, 2004, the Four Star bankruptcy proceedings were converted to
9 Chapter 7.

11 49. In furtherance of the conspiracy with COMERICA, the Four Star Managers
12 represented in bankruptcy court that Four Star only had \$82.00 in the Four Star Comerica
13 Account. By doing this, the Four Star Managers concealed from the Plaintiffs, other Four Star
14 investors and the Four Star bankruptcy trustee that COMERICA had used Four Star money to
15 reduce the Anson/Garrett Line of Credit, which had a direct benefit to COMERICA.

17 50. In an attempt to recover assets of the Four Star bankruptcy estate, the Four Star
18 bankruptcy trustee commenced several adversary proceedings in Bankruptcy Court, including
19 actions against the Four Star Managers for fraud and breach of fiduciary duty. In one of these
20 proceedings, against Four Star insider David Roberts, the court made a finding that Four Star was
21 a Ponzi scheme and that the Four Star Managers had defrauded Four Star investors.

23 51. Upon information and belief, throughout the Four Star bankruptcy proceedings,
24 the Four Star Managers, COMERICA and Smith purposely concealed COMERICA's and Smith's
25 material and knowing assistance to Four Star in perpetrating the Four Star Managers' fraud and
26 breach of fiduciary duty to Plaintiffs and other investors of Four Star, as heretofore alleged.
27 COMERICA and Smith also knew that the reduction of the Anson/Garrett Line of Credit was
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1 done with converted funds that belonged to Four Star, and thereafter to the Four Star bankruptcy
2 estate, but failed to stop it or to alert the Four Star bankruptcy trustee or anyone else to this fact.

3 52. Several tens of million dollars were transferred out of the Four Star Comerica
4 Account and applied toward the Anson/Garrett Line of Credit even though COMERICA knew
5 that Four Star had substantial creditor obligations, that the funds belonged to investors and not
6 Anson or Garrett, and that Four Star was neither an account holder nor a guarantor on the Anson-
7 Garrett Line of Credit. COMERICA and Smith purposely concealed these transfers from
8 government authorities by failing to report them which was in violation of their obligations to
9 report suspicious account activity under, inter alia, Title 12, § 21.11 of the Code of Federal
10 Regulations. Under said section, COMERICA is obligated to file a Suspicious Activity Report for
11 any transaction which has no business or apparent lawful purpose and where COMERICA knows
12 of no reasonable explanation after examining the available facts.

13 53. Plaintiffs are informed and believe and thereon allege that at all times prior to the
14 filing of this Complaint, Anson and Garrett were unwilling to cooperate with any investigations or
15 inquiries into the operation of Four Star, including without limitation investigations by the trustee
16 of the Four Star bankruptcy estate and others in connection with the Four Star bankruptcy, on the
17 ground that they, Anson and Garrett, were potential targets of criminal investigations regarding
18 their involvement in Four Star, and that any responses they might give to such investigative
19 inquiries could incriminate them. Consequently, Plaintiffs have been unable, and would not have
20 been able with the exercise of reasonable diligence, to learn any facts from Anson or Garrett about
21 the existence of the Banking Scheme or COMERICA's or Smith's role in the Banking Scheme or
22 the Four Star Ponzi Scheme.
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1 54. In or about 2004, Cohn was sentenced to a five (5) year term in federal prison for
2 his conviction in federal court for his role in connection with Four Star's operation of a credit card
3 scheme that was unrelated to the Four Star Ponzi Scheme. On October 1, 2007, while Cohn was
4 still serving his prison sentence, the United States Attorney filed an Information (hereinafter, the
5 "**Cohn Wire Fraud Information**") in *United States of America v. Mark Forest Cohn*, U.S.
6 District Court, Central District of California, Case No. 07-01104-PSG (hereinafter the "**Cohn**
7 **Wire Fraud Action**"), charging Cohn with federal criminal violations including conspiracy and
8 wire fraud based on his role in the Four Star Ponzi Scheme. Plaintiffs are informed and believe
9 and thereon allege while Cohn was still serving his prison sentence described above, Cohn began
10 cooperating with the United States Attorneys' office concerning Cohn's role in the Four Star's
11 unlawful activities, as part of a plea bargain to the charges made in the Cohn Wire Fraud
12 Information. Plaintiffs are informed and believe and thereon allege that, in connection with such
13 cooperation by Cohn, Cohn first disclosed to the United States Attorney the existence of the
14 Banking Scheme, and COMERICA's and Smith's role in the Banking Scheme and the Four Star
15 Ponzi Scheme. On November 5, 2007, pursuant to the foregoing plea bargain, Cohn pleaded
16 guilty to the Cohn Wire Fraud Information. On September 3, 2008, the United States attorney
17 filed a sentencing report in the Cohn Wire Fraud Action (hereinafter the "**Cohn Wire Fraud**
18 **Sentencing Report**") which commended Cohn for his full cooperation in the United States
19 Attorneys' investigation in connection with Four Star's activities, and recommended that Cohn's
20 sentence for his guilty plea to the Cohn Wire Fraud Information consist of probation and home
21 detention rather than a prison sentence. On or about September 29, 2008, the Court in the Cohn
22 Wire Fraud Action followed the recommendations of the United States Attorney in the Cohn Wire
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1 Fraud Sentencing Report and sentenced Cohn to probation and home detention for his role in Four
2 Star's unlawful activities as alleged in the Cohn Wire Fraud Information.

3 55. In or about October 2008, following his sentencing in the Cohn Wire Fraud
4 Action, Cohn disclosed for the first time to one of the Plaintiffs the existence of the Banking
5 Scheme and COMERICA's and Smith's roles in the Banking Scheme and the Four Star Ponzi
6 Scheme. Plaintiffs are informed and believe and thereon allege that, apart from any disclosures
7 that Cohn may have made to his criminal legal counsel, and/or to the United States Attorney or
8 other court-appointed representatives in connection with Cohn's cooperation as described in the
9 Cohn Wire Fraud Sentencing Report, Cohn had never previously disclosed to any person the
10 existence of the Banking Scheme or COMERICA's or Smith's roles in the Banking Scheme or
11 the Four Star Ponzi Scheme. Consequently, prior to October 2008 Plaintiffs were unable, and
12 would not have been able with the exercise of reasonable diligence, to learn any facts from Cohn
13 about the existence of the Banking Scheme or COMERICA's or Smith's role in the Banking
14 Scheme and the Four Star Ponzi Scheme.

15 56. Plaintiffs did not know of or suspect COMERICA's and Smith's involvement in
16 the Four Star Ponzi Scheme, or of the existence of the Banking Scheme or any material part
17 thereof, until Cohn's disclosure in or about October 2008 as alleged above. Prior to
18 approximately October 2008, even with due diligence, it would have been impossible for
19 Plaintiffs to have discovered or suspected the existence of the Banking Scheme or COMERICA's
20 or Smith's involvement in the Banking Scheme, or the Four Star Ponzi Scheme or any material
21 part thereof. In addition to the facts alleged above, neither COMERICA nor Smith ever publicly
22 disclosed or acknowledged such participation or involvement, or the existence of the Banking
23 Scheme or any material part thereof. Furthermore, there were no publicly-available documents
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1 which Plaintiffs could have accessed in the exercise of reasonable diligence that would have
2 disclosed or implied such participation or involvement, or the existence of the Banking Scheme or
3 any material part thereof.

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5 57. Had the Four Star Managers, COMERICA and Smith not concealed the existence
6 of the Banking Scheme, Plaintiffs would not have been delayed in filing this claim.

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8
9 **FIRST CAUSE OF ACTION**
10 **Aiding and Abetting Breach of Fiduciary Duty**
11 **(Against All Defendants)**

12 58. Plaintiffs hereby incorporate by reference and re-allege all of the allegations
13 contained in Paragraphs 1 through 57 above.

14 59. Each of the Plaintiffs invested the Loss Period Investments pursuant to the terms
15 of one or more of several written investment documents (collectively hereinafter, the "**Investment**
16 **Documents**") that were delivered to Plaintiffs by Four Star via fax and/or United States mail. The
17 Investment Agreements included the Private Placement Memorandum, Subscription Agreement,
18 Cash Flow Notes and Arbitrage Agreements as defined below:

- 19 (a) A private placement memorandum dated June 30, 1997 (hereinafter
20 referred to as the "**Private Placement Memorandum**") which was
21 distributed to many of the Plaintiffs by the Four Star Managers by mail
22 and/or fax. The Private Placement Memorandum contained numerous
23 material representations, such as the following: (i) that payments would
24 only be made from cash flowing from Four Star's operations; (ii) that
25 capital would only be used to pay certain operating expenses and to fund
26 telecommunications and bridge financing; (iii) that capital would only be
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1 invested in positions secured by accounts receivable from companies in the
2 telephone industry or in investments where the principal was guaranteed
3 by a rated insurance company; (iv) that management's aggregate \$750,000
4 annual fees would only be paid to the extent that the company had net
5 income; (v) that the principal was "safe"; and (vi) that the return of the
6 principal investment was unconditionally guaranteed. Pursuant to the
7 offering described in the Private Placement Memorandum, investors were
8 given the opportunity to purchase membership units in Four Star. The
9 purchase of membership units was made pursuant to a "**Subscription**
10 **Agreement**" that was distributed to investors by the Four Star Managers
11 by mail and/or fax. Under the terms of the Subscription Agreement,
12 holders of membership units would receive a "priority return" on their
13 investment of between 13% and 18% per annum, subject to the condition
14 that a priority return would be payable only from available cash flow. In
15 reliance on the representations made in the Private Placement
16 Memorandum, many of the Plaintiffs purchased membership units in Four
17 Star.

- 18
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20
21 (b) Four Star raised money by issuing cash flow notes (hereinafter referred to
22 as "**Cash Flow Notes**") to investors, which provided for payment of
23 interest of 14% and 18% per annum. The Cash Flow Notes were
24 distributed to investors by mail and/or fax. Like the Private Placement
25 Memorandum, the Cash Flow Notes promised: (i) that payments would
26 only be made from available cash flow from Four Star's operations; (ii)
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1 that capital would only be invested in positions secured by accounts
2 receivable from companies in the telephone industry or in investments
3 where the principal was guaranteed; (iii) that the principal was "safe"; and
4 (iv) that the return of the principal investment was unconditionally
5 guaranteed. The numerous Cash Flow Notes, containing these
6 representations, were distributed to investors between 1997 and 2002.
7 Because of the Four Star Managers' regular and reliable history of making
8 interest payments, several of the Plaintiffs invested in the Four Star Cash
9 Flow Notes, and several of these Plaintiffs then re-invested interest
10 received from the Cash Flow Notes into new Cash Flow Notes or other
11 Four Star investment vehicles.
12

13
14 (c) Between late 1999 and late 2002, Four Star raised investment capital
15 through eight of what Four Star referred to as "arbitrage" transactions,¹
16 whereby several of the Plaintiffs were solicited to invest in specific
17 transactions, identified as Arbitrage #1 through Arbitrage #8, which Four
18 Star represented to these Plaintiffs to be "arbitrage" transactions in the
19 telecommunications industry. Under the investment agreements for the
20 "arbitrage" transactions (hereinafter referred to as "Arbitrage
21 Agreements"), these Plaintiffs were promised up to a 30% yield based on
22 income from the transactions, but only to the extent of available cash flow,
23 and that principal was guaranteed to be safe. Relying on Four Star's
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28 ¹ An arbitrage transaction is one where the investor takes advantage of price differences between two markets, striking a combination of matching deals that capitalize upon the imbalance, with the profit being the differences in the market price.

1 regular and reliable history of making interest payments, these Plaintiffs
2 invested in these "arbitrage" transactions. The Arbitrage Agreements,
3 which contained these representations, were transmitted to these Plaintiffs,
4 by mail and fax, during the following periods of time: (1) Arbitrage #1,
5 between late 1999 and March 2000; (2) Arbitrage #2, between March 2000
6 and September 2000; (3) Arbitrage #3, between September 2000 and
7 November 2000; (4) Arbitrage #4, between January 2001 and March
8 2001; (5) Arbitrage #5, between May and August 2001; (6) Arbitrage
9 #6, between September and October 2001; (7) Arbitrage #7, between
10 December 2001 and January 2002; and (8) Arbitrage #8, between
11 September and October 2002.
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14 60. Notwithstanding that the Investment Documents expressly provided that any
15 return on the principal investment would be from available cash flow only, Four Star maintained a
16 regular practice of paying regular fixed monthly "returns" to investors, including without
17 limitation Plaintiffs. Payment of returns were made via the U.S. mail or interstate wire. Anson
18 and Garrett regularly referred to this history of regular fixed payments (said payments are
19 hereinafter referred to as "**Investor Distributions**") when soliciting new investments in Four Star
20 from potential investors, including many of the Plaintiffs, as evidence that Four Star's operations
21 were "safe" and had been consistently able to provide a "stable" return on investment.
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24 61. The payment of regular Investor Distributions constituted a continuing
25 representation by Four Star to its investors, including Plaintiffs, that Four Star's investments were
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1 continuing to generate sufficient cash flow to allow for the continued payment of distributions in
2 accordance with the Investment Documents.

3 62. The assurances and representations in the Private Placement Memorandum and in
4 the Cash Flow Notes described in Paragraph 59 above, Anson's and Garrett's references to the
5 history of Investor Distributions as evidence of the safety and stability of Four Star's operations as
6 described in Paragraph 60 above, and the continuing representation based on the payment of
7 regular Investor Distributions as described in Paragraph 61 above, are hereinafter collectively
8 referred to as the "**Solicitation Representations**".
9

10 63. The Solicitation Representations were materially false and designed to mislead.
11 Plaintiffs allege that at the time the Private Placement Memorandum was issued and Cash Flow
12 Notes were distributed, the Four Star Managers knew: (1) that Four Star would make Investor
13 Distributions regardless of whether there was available cash flow, (2) that Four Star would not
14 invest solely in secured positions, bridge financing, or accounts receivable in the
15 telecommunications industry, and (3) that the investors' principal investment was not safe.
16

17 64. Four Star did not earn a net profit in any year from 1998 forward, notwithstanding
18 that it made regular Investor Distributions to Plaintiffs until approximately October of 2002.
19 Moreover, almost all of the money for Investor Distributions came not from income or cash from
20 operations of Four Star, but rather constituted re-distributions of capital, that is, new investment
21 money obtained by Four Star was used to fund monthly Investor Distributions rather than being
22 invested in legitimate business activities.
23

24 65. Anson and Garrett made the Solicitation Representations to Plaintiffs with the
25 actual intent to defraud and to induce them to invest in Four Star, to forbear from withdrawing
26 investments and, finally, to reinvest their Investor Distributions in Four Star.
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1 66. The Four Star Managers made regular Investor Distributions with the actual intent
2 to defraud Plaintiffs. The Investor Distributions were generally made to Plaintiffs by checks sent
3 through the U.S. Mail. By making regular Investor Distributions, the Four Star Managers
4 deliberately made a continuing false representation (hereinafter referred to as the "Cash Flow
5 Representation") to Plaintiffs that Four Star was generating sufficient cash flow from its
6 operations to allow for the payment of such Investor Distributions in accordance with the terms of
7 the Investment Documents, and thus that Four Star was a safe operation providing a stable return
8 on investment. The Four Star Managers made the Cash Flow Representation to Plaintiffs with the
9 actual intent to defraud and to induce Plaintiffs to invest in Four Star, to forbear from withdrawing
10 investments and, finally, to reinvest their Investor Distributions in Four Star.

13 67. When Anson and Garrett made the Solicitation Representations and the Cash
14 Flow Representation to Plaintiffs, there existed a special relationship of trust and confidence
15 between Anson and Garrett, on the one hand, and Plaintiffs, on the other hand. For many
16 Plaintiffs, this relationship of trust was based on the fact that Anson and Garrett had provided
17 professional accounting services to those Plaintiffs for many years, and in that capacity had given
18 investment advice to those Plaintiffs. For other Plaintiffs, this relationship was based on the fact
19 that these Plaintiffs had been introduced to Anson and/or Garrett by mutual friends or business
20 associates to whom Anson and/or Garrett had provided professional accounting services and/or
21 investment advice for many years. In addition, when Anson and Garrett made the Solicitation
22 Representations and the Cash Flow Representation to Plaintiffs, many of the Plaintiffs were aware
23 of the fact that Anson and Garrett had managed for many years and were continuing to manage
24 several multi-million dollar investment entities, including without limitation Phoenix Hotel
25 Associates, Ltd., a California limited partnership, Intercoastal-Phoenix Associates, Ltd., a
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1 California limited partnership, Roberts-O'Hare Limited Partnership, a California limited
2 partnership, and Cal O'Hare Ltd., a California limited partnership, on behalf of many of their
3 accounting clients as well as others. As a result of the foregoing, when Anson and Garrett made
4 the Solicitation Representations and the Cash Flow Representation to Plaintiffs, Plaintiffs relied
5 on the professional judgment and advice of Anson and/or Garrett with respect to Plaintiffs'
6 investment decisions, Anson and Garrett intended that they so rely, and Anson and Garrett acted
7 as investment advisors with respect to Plaintiffs. In such capacity as investment advisors, Anson
8 and Garrett owed each of the Plaintiffs, who were in effect their clients, fiduciary duties.

10 68. When Anson and Garrett made the Solicitation Representations and the Cash Flow
11 Representation to Plaintiffs, Cohn was the attorney for Four Star, and in that capacity Cohn owed
12 a fiduciary duty to Four Star and its members and investors, including each of the Plaintiffs.

14 69. When Anson and Garrett made the Solicitation Representations and the Cash Flow
15 Representation to Plaintiffs, Anson, Garrett and Cohn were managers of Four Star, a limited
16 liability company, and in that capacity they each owed a fiduciary duty to Four Star and its
17 members and investors, including each of the Plaintiffs.

19 70. In inducing Plaintiffs to invest in Four Star, to forbear from withdrawing
20 investments and to reinvest their Investor Distributions in Four Star by making the Solicitation
21 Representations and the Cash Flow Representation, Anson, Garrett and Cohn breached their
22 fiduciary duties to Plaintiffs. As a proximate result thereof, Plaintiffs have suffered losses as
23 hereinafter set forth.

25 71. Anson, Garrett and Cohn further breached their fiduciary duties to Plaintiffs by
26 using Plaintiffs' investments in Four Star to personally benefit Anson and Garrett, in that said
27 investments were used by the Four Star Managers to pay principal and interest owing by Anson
28

1 and Garrett to COMERICA on the Anson/Garrett Line of Credit, which was not a Four Star
2 obligation.

3 72. Defendants COMERICA and DOES 1-100, inclusive (each a "Defendant" and
4 collectively "DEFENDANTS") at all material times had actual knowledge of Anson's, Garrett's
5 and Cohn's fiduciary duties to Plaintiffs with respect to Plaintiffs' investments in Four Star.
6 DEFENDANTS at all material times knew that the Four Star Managers were violating their
7 fiduciary duties to Plaintiffs as alleged above, and actively participated in the operation of the
8 Four Star Ponzi Scheme by enabling and facilitating the Banking Scheme as alleged above,
9 including the application of Plaintiffs' investments to pay Anson's and Garrett's obligations on
10 the Anson/Garrett Line of Credit. As alleged above, the Banking Scheme was a material and an
11 essential component of the Four Star Ponzi Scheme. In acting and failing to act as alleged above,
12 DEFENDANTS actively and affirmatively assisted in the Four Star Ponzi Scheme and helped
13 conceal it from Plaintiffs. DEFENDANTS enabled the fraud to flourish and stay hidden from its
14 victims.
15

16 73. Without DEFENDANTS' aid, the Four Star Ponzi Scheme would not have grown
17 as large, would not have become as pernicious as it did, nor would it have lasted beyond
18 approximately December 1999, when, but for the initiation of the Banking Scheme at that time,
19 the Creditor Writs would have prevented Four Star from continuing to make its regular monthly
20 Investor Distributions and thus would have alerted Plaintiffs to Four Star's true insolvent
21 condition.
22

23 74. DEFENDANTS substantially assisted and aided and abetted Anson's, Garrett's
24 and Cohn's breach of fiduciary duties with the specific intent to facilitate conduct, i.e., the
25 Banking Scheme, which constituted a material part of said breach.
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1 75. As a proximate result of DEFENDANTS' conduct, Plaintiffs suffered economic
2 damages in an amount exceeding \$50 million.

3 76. As a proximate result of DEFENDANTS' conduct, many of the Plaintiffs suffered
4 severe emotional distress, including without limitation anxiety, nervousness, sleeplessness,
5 humiliation, anguish, and physical distress. As a result of such harm, such Plaintiffs have
6 suffered such damages in an amount according to proof.

7 77. DEFENDANTS' actions were malicious, fraudulent, oppressive, intended to
8 injure Plaintiffs and/or in reckless disregard of Plaintiffs' rights. Consequently, Plaintiffs are
9 entitled to punitive damages.

10 78. Several of the Plaintiffs are senior citizens and/or disabled persons as those terms
11 are defined by California Civil Code § 3345. Plaintiffs are informed and believe and thereon
12 allege that one or more of the following are true: (a) when DEFENDANTS aided and abetted the
13 unfair and/or deceptive acts of Anson, Garrett and Cohn as alleged above, DEFENDANTS knew
14 or should have known that said acts were directed to one or more senior citizens; (b) said acts by
15 DEFENDANTS caused one or more of said senior citizen Plaintiffs or disabled Plaintiffs to suffer
16 one or more of the following: (i) loss or encumbrance of a primary residence, principal
17 employment, or source of income; (ii) substantial loss of property set aside for retirement, or for
18 personal or family care and maintenance; or (iii) substantial loss of payments received under a
19 pension or retirement plan or a government benefits program, or assets essential to the health or
20 welfare of said Plaintiffs; (c) one or more of said senior citizen Plaintiffs or disabled Plaintiffs
21 were substantially more vulnerable than other members of the public to DEFENDANTS' conduct
22 because of age, poor health or infirmity, impaired understanding, restricted mobility, or disability,
23 and actually suffered substantial physical, emotional, or economic damage resulting from
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1 DEFENDANTS' conduct. Accordingly, said senior citizen Plaintiffs and disabled Plaintiffs are
2 entitled to all of the remedies of Civil Code § 3345 against each of the DEFENDANTS, including
3 without limitation treble the amount of punitive damages to which said Plaintiffs would otherwise
4 be entitled. In addition, said Plaintiffs are entitled to recover their attorneys' fees under California
5 Welfare & Institutions Code § 15657.
6

7 WHEREFORE, Plaintiffs pray judgments against DEFENDANTS as hereinafter set forth.
8

9
10 **SECOND CAUSE OF ACTION**
11 **Aiding and Abetting Fraud**
12 **(Against All Defendants)**

13 79. Plaintiffs hereby incorporate by reference and re-allege all of the allegations
14 contained in Paragraphs 1 through 75 above.

15 80. As alleged above, including without limitation in Paragraphs 59 through 62 and
16 Paragraph 66 above, Four Star and the Four Star Managers, through the fraudulent Solicitation
17 Representations and the fraudulent Cash Flow Representation, intentionally defrauded every
18 Plaintiff.

19 81. Plaintiffs relied on the fraudulent Solicitation Representations and the fraudulent
20 Cash Flow Representation and suffered damages as a result.

21 82. DEFENDANTS substantially assisted and aided and abetted Four Star's and the
22 Four Star Managers' fraud against Plaintiffs by virtue of DEFENDANTS' specific intent to
23 facilitate fraudulent conduct, i.e., the Banking Scheme. The Banking Scheme constituted a
24 material part of said fraud because it enabled Four Star to continue to make monthly distribution
25 payments to Plaintiffs notwithstanding Four Star's insolvency, thus giving Four Star the illusion
26 of viability that induced Plaintiffs to invest new funds in Four Star. DEFENDANTS at all
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1 material times knew that Four Star and the Four Star Managers were engaging in fraud and
2 willingly provided their assistance to Four Star and the Four Star Managers.

3 83. As a proximate result of DEFENDANTS' conduct, Plaintiffs suffered economic
4 damages in an amount exceeding \$50 million.

5
6 84. As a proximate result of DEFENDANTS' conduct, many of the Plaintiffs suffered
7 severe emotional distress, including without limitation anxiety, nervousness, sleeplessness,
8 humiliation, anguish, and physical distress. As a result of such harm, such Plaintiffs have suffered
9 such damages in an amount according to proof.

10
11 85. DEFENDANTS' actions were malicious, fraudulent, oppressive, intended to
12 injure Plaintiffs, and/or in reckless disregard of Plaintiffs' rights. Consequently, Plaintiffs are
13 entitled to punitive damages.

14 86. Several of the Plaintiffs are senior citizens and/or disabled persons as those terms
15 are defined by California Civil Code § 3345. Plaintiffs are informed and believe and thereon
16 allege that one or more of the following are true: (a) when DEFENDANTS aided and abetted the
17 unfair and/or deceptive acts of Four Star and the Four Star Managers as alleged above,
18 DEFENDANTS knew or should have known that said acts were directed to one or more senior
19 citizens; (b) said acts by DEFENDANTS caused one or more of said senior citizen Plaintiffs or
20 disabled Plaintiffs to suffer one or more of the following: (i) loss or encumbrance of a primary
21 residence, principal employment, or source of income; (ii) substantial loss of property set aside for
22 retirement, or for personal or family care and maintenance; or (iii) substantial loss of payments
23 received under a pension or retirement plan or a government benefits program, or assets essential
24 to the health or welfare of said Plaintiffs; (c) one or more of said senior citizen Plaintiffs or
25 disabled Plaintiffs were substantially more vulnerable than other members of the public to
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1 DEFENDANTS' conduct because of age, poor health or infirmity, impaired understanding,
 2 restricted mobility, or disability, and actually suffered substantial physical, emotional, or
 3 economic damage resulting from DEFENDANTS' conduct. Accordingly, said senior citizen
 4 Plaintiffs and disabled Plaintiffs are entitled to all of the remedies of Civil Code § 3345 against
 5 each of the DEFENDANTS, including without limitation treble the amount of punitive damages
 6 to which said Plaintiffs would otherwise be entitled. In addition, said Plaintiffs are entitled to
 7 recover their attorneys' fees under California Welfare & Institutions Code § 15657.
 8

9 WHEREFORE, Plaintiffs pray judgments against DEFENDANTS as hereinafter set forth.
 10

11 **THIRD CAUSE OF ACTION**
 12 **Violation of Cal. Bus. & Prof. Code § 17200 et seq.**
 13 **(Against All Defendants)**

14 87. Plaintiffs hereby incorporate by reference and re-allege all of the allegations
 15 contained in Paragraphs 1 through 75 above.

16 88. DEFENDANTS' conduct as previously alleged constitutes unlawful business acts
 17 or practices within the meaning of California Business & Professions Code § 17200, including
 18 without limitation the following:

- 19 (a) DEFENDANTS' conduct in facilitating and enabling the Banking Scheme
 20 as alleged above was intended to hinder and delay the rights of Four Star's
 21 creditors, by (i) concealing Four Star's funds from Four Star creditors
 22 holding Creditor Writs, (ii) improperly applying Four Star's funds to the
 23 payment of the Anson/Garrett Line of Credit, which payments had no
 24 legitimate business purpose and had the effect of depriving Four Star of
 25 funds that otherwise would have been available to satisfy Four Star's
 26 creditors, including without limitation creditors holding Creditor Writs,
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1 and (iii) improperly applying Four Star's funds to the payment of Investor
2 Distributions, which payments had the effect of depriving Four Star of
3 funds that otherwise would have been available to satisfy Four Star's
4 creditors, including without limitation creditors holding Creditor Writs,
5 whose rights to Four Star's assets were superior as a matter of law to the
6 rights of Four Star investors. The foregoing conduct by DEFENDANTS
7 violates California's Uniform Fraudulent Transfer Act, Civil Code §§
8 3439.01 – 3439.12.
9

- 10 (b) COMERICA's failure to report to government authorities the material
11 elements of the Banking Scheme as alleged above, including without
12 limitation (i) the large daily negative balance in the Four Star Comerica
13 Account, (ii) the regular deposit of funds from non-Four Star accounts into
14 the Four Star Comerica Account in amounts sufficient to cover that day's
15 checks but then leaving the account balance at zero or near-zero, and (iii)
16 the regular transfer of funds from the Four Star Comerica Account to non-
17 Four Star accounts including the Anson/Garrett Line of Credit, constitutes
18 a violation of Title 12, § 21.11 of the Code of Federal Regulations. Under
19 said section, COMERICA was obligated to file a Suspicious Activity
20 Report for such transfers because said activities had no apparent legitimate
21 business or lawful purpose, and there was no reasonable explanation for
22 said activities except as a mechanism to hinder and delay Four Star's
23 creditors.
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1 (c) The investments made by Plaintiffs in Four Star during the Loss Period
2 constitute "securities" within the meaning of California Corporations Code
3 § 25401. By virtue of the conduct of Anson, Garrett, and Cohn in
4 connection with the making of these investments, as alleged in Paragraphs
5 59 through 62 above, Anson, Garrett, and Cohn solicited the sale of
6 securities through the making of false representations in violation of said
7 code section. DEFENDANTS' conduct in facilitating and enabling the
8 Banking Scheme as alleged in Paragraphs 32 through 37 above constitutes
9 a violation of California Corporations Code § 25403(b), which provides:
10 "Any person that knowingly provides substantial assistance to another
11 person in violation of any provision of this division or any rule or order
12 there under shall be deemed to be in violation of that provision, rule, or
13 order to the same extent as the person to whom the assistance was
14 provided."

15 (d) COMERICA's conduct alleged in Paragraphs 33 through 37 above
16 violated safety and soundness standards applicable to COMERICA's
17 banking activities as prescribed by 12 U.S.C. § 1831p-1 and Title 12, Part
18 30 of the Code of Federal Regulations.

19 (e) COMERICA's conduct permitting its banking operations to facilitate the
20 material elements of the Banking Scheme as alleged in Paragraphs 33
21 through 37 above constitutes a violation of audit and reporting standards
22 applicable to COMERICA's banking activities as prescribed by Title 12,
23 Part 363 of the Code of Federal Regulations.
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1 89. DEFENDANTS' conduct as previously alleged, including without limitation as
2 alleged in Paragraph 88 above, constitutes unfair business acts or practices within the meaning of
3 California Business & Professions Code § 17200.

4 90. DEFENDANTS' conduct as previously alleged, including without limitation as
5 alleged in Paragraph 87 above, constitutes fraudulent business acts or practices within the
6 meaning of California Business & Professions Code § 17200. DEFENDANTS knowingly
7 assisted the Four Star Managers in a fraudulent scheme, i.e., the Banking Scheme, in order to
8 hinder and delay Four Star creditors holding Creditor Writs, and to thereby facilitate the Four Star
9 Ponzi Scheme. The Banking Scheme and the Four Star Ponzi Scheme each constitutes a *per se*
10 fraudulent business practice.
11

12 91. DEFENDANTS' unlawful, unfair and/or fraudulent acts in enabling and
13 facilitating the Banking Scheme as described above constitutes unfair competition within the
14 meaning of California Business & Professions Code § 17200. Plaintiffs lost money, i.e., the Loss
15 Period Investments, as a result of said unfair competition. Accordingly, Plaintiffs may obtain
16 against DEFENDANTS all remedies and penalties authorized by California Business &
17 Professions Code § 17203, including without limitation restitution, disgorgement, and other relief
18 for each illegal, unfair and fraudulent business act or practice, and attorneys' fees pursuant to
19 California Code of Civil Procedure § 1021.5 and the Court's equitable powers, in an amount
20 subject to proof.
21

22 92. Several of the Plaintiffs are senior citizens and/or disabled persons as those term
23 are defined by California Civil Code § 3345. Plaintiffs are informed and believe and thereon
24 allege that one or more of the following are true: (a) when DEFENDANTS were engaged in the
25 unfair and/or deceptive acts as alleged above, DEFENDANTS knew or should have known that
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1 said acts were directed to one or more senior citizens; (b) said acts by DEFENDANTS caused one
2 or more of said senior citizen Plaintiffs or disabled Plaintiffs to suffer one or more of the
3 following: (i) loss or encumbrance of a primary residence, principal employment, or source of
4 income; (ii) substantial loss of property set aside for retirement, or for personal or family care and
5 maintenance; or (iii) substantial loss of payments received under a pension or retirement plan or a
6 government benefits program, or assets essential to the health or welfare of said Plaintiffs; (c) one
7 or more of said senior citizen Plaintiffs or disabled Plaintiffs were substantially more vulnerable
8 than other members of the public to DEFENDANTS' conduct because of age, poor health or
9 infirmity, impaired understanding, restricted mobility, or disability, and actually suffered
10 substantial physical, emotional, or economic damage resulting from DEFENDANTS' conduct.
11 Accordingly, and in view of the fact that a purpose or effect of the restitution remedy under
12 California Business & Profession Code § 17203 is to punish and/or deter unfair and/or deceptive
13 conduct proscribed by California Business & Profession Code § 17200, said senior citizen
14 Plaintiffs and disabled Plaintiffs are entitled to all of the remedies of Civil Code § 3345 against
15 each of the DEFENDANTS, including without limitation treble the amount of restitution or other
16 relief to which said Plaintiffs would otherwise be entitled under California Business & Professions
17 Code § 17203. In addition, said Plaintiffs are entitled to recover their attorneys' fees under
18 California Welfare & Institutions Code § 15657.

19 WHEREFORE, Plaintiffs pray judgments against DEFENDANTS as hereinafter set forth.

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FOURTH CAUSE OF ACTION
Aiding and Abetting Violation of Cal. Bus. & Prof. Code § 17200 et seq.
(Against All Defendants)

93. Plaintiffs hereby incorporate by reference and re-allege all of the allegations contained in Paragraphs 1 through 75 above.

94. The conduct of Four Star and the Four Star Managers as previously alleged constitute unlawful business acts or practices within the meaning of California Business & Professions Code § 17200, including without limitation the following:

- (a) Said conduct was intended to hinder and delay the rights of Four Star's creditors, by (i) concealing Four Star's funds from Four Star creditors holding Creditor Writs, (ii) improperly applying Four Star's funds to the payment of the Anson/Garrett Line of Credit, which payments had no legitimate business purpose and had the effect of depriving Four Star of funds that would otherwise have been available to satisfy Four Star's creditors, including without limitation creditors holding Creditor Writs, and (iii) improperly applying Four Star's funds to the payment of Investor Distributions, which payments had the effect of depriving Four Star of funds that would otherwise have been available to satisfy Four Star's creditors, including without limitation creditors holding Creditor Writs, whose rights to Four Star's assets were superior as a matter of law to the rights of Four Star investors. The foregoing conduct violates California's Uniform Fraudulent Transfer Act, Civil Code §§ 3439.01 – 3439.12.

1 (b) The investments made by Plaintiffs during the Loss Period constitute
2 “securities” within the meaning of California Corporations Code § 25401.
3 By virtue of the conduct of Four Star and the Four Star Managers in
4 connection with the making of these investments, as alleged in Paragraphs
5 59 through 62 and Paragraph 66 above, Four Star and the Four Star
6 Managers solicited the sale of securities through the making of false
7 representations in violation of said code section. Said conduct constitutes a
8 violation of California Corporations Code § 25401, which provides: “It is
9 unlawful for any person to offer or sell a security in this state or buy or
10 offer to buy a security in this state by means of any written or oral
11 communication which includes an untrue statement of a material fact or
12 omits to state a material fact necessary in order to make the statements
13 made, in the light of the circumstances under which they were made, not
14 misleading.”

15 (c) The conduct of Four Star and the Four Star Managers as previously alleged
16 constitutes a violation of §§ 10(b) and 12(a)(2) of the Securities Exchange
17 Act of 1934. Section 10(b) makes it “unlawful for any person, ... [t]o use
18 and employ ... any manipulative or deceptive device or contrivance” to
19 violate rules and regulations of the Securities and Exchange Commission.
20 (15 U.S.C. § 78j(b).) Rule 10b-5 promulgated under this section prohibits
21 any “artifice to defraud” or any act “which operates or would operate as a
22 fraud or deceit.” (17 C.F.R. § 240.10b-5.) Section 12(a)(2) imposes
23 liability for selling a security by means of a prospectus or oral
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1 communication containing an untrue statement of a material fact or a
2 material omission of a fact needed to make the statement not misleading.
3 The term “seller” for purposes of section 12 includes “participants” whose
4 acts are “both necessary to and a substantial factor in the sale transaction.”
5 (*Admiralty Fund v. Jones*, 677 F.2d 1289, 1294 (9th Cir. 1982).) A
6 defendant is a substantial factor in the sale transaction when “the injury to
7 the plaintiff flowed directly and proximately from the actions of the
8 defendant.” (*Id.*) Four Star and the Four Star Managers, by their conduct
9 as herein alleged, defrauded and deceived Plaintiffs by creating the illusion
10 of a profitable business when in fact Four Star was insolvent and unable to
11 lawfully make distributions to Plaintiffs during the Loss Period.
12

13
14 (d) The conduct of Four Star and the Four Star Managers, as alleged above,
15 constitutes a violation of 18 U.S.C. § 1341 (mail fraud) in that they
16 knowingly used the U.S. Postal Service to transmit fraudulent and
17 misleading documents, including without limitation the Solicitation
18 Representations as described in Paragraphs 59 through 62 above and the
19 Cash Flow Representation as described in Paragraph 66 above.
20

21 (e) The conduct of Four Star and the Four Star Managers, as alleged above,
22 constitutes a violation of 18 U.S.C. § 1343 (wire fraud), in that they
23 knowingly used interstate wires to transfer funds between the Four Star
24 Comerica Account and non-Four Star accounts including without
25 limitation the Anson/Garrett Line of Credit, in order to conceal Four Star
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1 funds from Four Star creditors holding Creditor Writs and to further the
2 Banking Scheme and the Four Star Ponzi Scheme as previously described.

3 (f) The conduct of Four Star and the Four Star Managers, as alleged above,
4 constitutes a violation of 18 U.S.C. § 1956(a)(1)(A)(i) (Promotional
5 Money Laundering), in that they knowingly conducted financial
6 transactions involving the proceeds of specified unlawful activity, namely,
7 transactions involving the proceeds of specified unlawful activity, namely,
8 mail fraud and wire fraud in violation of 18 U.S.C. §§ 1341 and 1343,
9 knowing that the property involved in the financial transactions
10 represented the proceeds of some form of unlawful activity, and with the
11 intent to promote the carrying on of such specified unlawful activity;
12

13 (g) The conduct of Four Star and the Four Star Managers, as alleged in
14 subparagraphs (d), (e) and (f) in this paragraph, constitutes a violation of
15 18 U.S.C. § 1962 (RICO), in that said conduct constituted a pattern of
16 racketeering activity in furtherance of an enterprise.
17

18 95. The conduct of Four Star and the Four Star Managers, as previously alleged,
19 constitutes unfair business acts or practices within the meaning of California Business &
20 Professions Code § 17200.
21

22 96. The conduct of Four Star and the Four Star Managers, as previously alleged,
23 constitutes fraudulent business acts or practices within the meaning of California Business &
24 Professions Code § 17200. DEFENDANTS knowingly operated the Banking Scheme intended
25 to deceive Four Star creditors holding Creditor Writs, and a Ponzi scheme intended to mislead
26 Plaintiffs, each of which schemes is a *per se* fraudulent business practice.
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1 97. The unlawful, unfair and/or fraudulent acts of Four Star and the Four Star
2 Managers in operating the Banking Scheme and the Four Star Ponzi Scheme as described above
3 constitute unfair competition within the meaning of California Business & Professions Code §
4 17200. Plaintiffs lost money, i.e., the Loss Period Investments, as a result of said unfair
5 competition. DEFENDANTS, by their conduct as previously alleged, including without
6 limitation Paragraphs 33 through 37, substantially aided and abetted Four Star and the Four Star
7 Managers in the commission of such unfair competition. DEFENDANTS aided and abetted the
8 unfair competition of Four Star and the Four Star Managers with actual knowledge of certain
9 specific acts constituting said unfair competition, i.e., those acts of Four Star and the Four Star
10 Managers which pertained to the Banking Scheme as alleged in Paragraphs 32 through 37 above,
11 and with the specific intent to facilitate said acts. Accordingly, Plaintiffs may obtain against
12 DEFENDANTS all remedies and penalties authorized by California Business & Professions Code
13 § 17203, including without limitation restitution, disgorgement, and other penalties for each
14 illegal, unfair and fraudulent business act or practice, and attorneys' fees pursuant to California
15 Code of Civil Procedure § 1021.5 and the Court's equitable powers, in an amount subject to
16 proof.

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18 98. Several of the Plaintiffs are senior citizens and/or disabled persons as those term
19 are defined by California Civil Code § 3345. Plaintiffs are informed and believe and thereon
20 allege that one or more of the following are true: (a) when DEFENDANTS aided and abetted the
21 unfair and/or deceptive acts of Four Star and the Four Star Managers as alleged above,
22 DEFENDANTS knew or should have known that said acts were directed to one or more senior
23 citizens and/or disabled persons; (b) said acts of Four Star and the Four Star Managers which were
24 aided and abetted by DEFENDANTS caused one or more of said senior citizen Plaintiffs or
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1 disabled Plaintiffs to suffer one or more of the following: (i) loss or encumbrance of a primary
2 residence, principal employment, or source of income; (ii) substantial loss of property set aside for
3 retirement, or for personal or family care and maintenance; or (iii) substantial loss of payments
4 received under a pension or retirement plan or a government benefits program, or assets essential
5 to the health or welfare of said Plaintiffs; (c) one or more of said senior citizen Plaintiffs or
6 disabled Plaintiffs was substantially more vulnerable than other members of the public to said acts
7 of Four Star and the Four Star Managers which were aided and abetted by DEFENDANTS
8 because of age, poor health or infirmity, impaired understanding, restricted mobility, or disability,
9 and actually suffered substantial physical, emotional, or economic damage resulting from said acts
10 of Four Star and the Four Star Managers. Accordingly, and in view of the fact that a purpose or
11 effect of the restitution remedy under California Business & Profession Code § 17203 is to punish
12 and/or deter unfair and/or deceptive conduct proscribed by California Business & Profession Code
13 § 17200, said senior citizen Plaintiffs and disabled Plaintiffs are entitled to all of the remedies of
14 Civil Code § 3345 against each of the DEFENDANTS, including without limitation trebling of
15 the amount of restitution to which said Plaintiffs would otherwise be entitled under California
16 Business & Professions Code § 17203. In addition, said Plaintiffs are entitled to recover their
17 attorneys' fees under California Welfare & Institutions Code § 15657.
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22 WHEREFORE, Plaintiffs pray judgments against DEFENDANTS as hereinafter set forth.

23 **FIFTH CAUSE OF ACTION**
24 **Violation of 18 U.S.C. § 1961(c)(d) (RICO)**
25 **(Against All Defendants)**

26 99. Plaintiffs hereby incorporate by reference and re-allege all of the allegations
27 contained in Paragraphs 1 through 75 above.

28 100. Each of the Defendants is a "person" within the meaning of that term as used in 18
U.S.C. § 1962.

1 101. At all times relevant to this Complaint, Four Star, the Four Star Managers, Smith
2 and COMERICA collectively constituted an "enterprise" (hereinafter referred to as the "**Four**
3 **Star Enterprise**") within the meaning of that term as used in 18 U.S.C. § 1962. Upon
4 information and belief, at all times relevant to this Complaint the Four Star Enterprise was an
5 ongoing association that functioned as a continuing unit for the purposes of acts of racketeering as
6 hereinafter alleged, in furtherance of the fraud, the Four Star Ponzi Scheme and the Banking
7 Scheme alleged in Paragraphs 29 through 37 above.

9 102. At all times relevant to this Complaint, the Four Star Enterprise engaged in
10 interstate commerce, and the activities of the enterprise affected interstate commerce.

12 103. At all times relevant to this Complaint, each of the DEFENDANTS was associated
13 with the Four Star Enterprise.

14 104. Upon information and belief, and as described in the General Allegations above,
15 DEFENDANTS engaged in a pattern of racketeering activity in furtherance of the Four Star
16 Enterprise, consisting of numerous related and continuous acts of wire fraud, as that term is
17 defined in 18 U.S.C. § 1343, mail fraud, as the term is defined in 18 U.S.C. § 1341, and money
18 laundering, as the term is defined in 18 U.S.C. § 1956, and committed these acts willfully or with
19 actual knowledge of the illegal activities. These acts include, but are not limited to the following:
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- 21 (a) DEFENDANTS knowingly caused funds from the Four Star Comerica
22 Account to be transmitted on numerous occasions during the Loss Period
23 by means of wire in interstate commerce within the meaning of 18 U.S.C.
24 § 1343 to the Anson/Garrett Line of Credit for the purposes of concealing
25 said funds from Four Star creditors holding Creditor Writs and furthering
26 the Four Star Enterprise through the operation of the Banking Scheme as
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1 alleged in Paragraphs 32 through 37 above. Specifically, but without
2 limitation, Plaintiffs allege that DEFENDANTS transferred monies from
3 the Four Star Comerica Account to the Anson/Garrett Line of Credit on or
4 around the following dates: 7/27/00, 10/24/00, 12/22/00, 1/25/01, 5/15/01,
5 8/13/01, 8/17/01, 11/28/01, 12/28/01, 1/24/02; 1/25/02; 01/28/02; 3/9/02;
6 3/11/02; 4/23/02; 5/21/02; 6/27/02. In total between 2000 and 2002 alone
7 DEFENDANTS transferred approximately \$37,014,885 out of the Four
8 Star Comerica Account into the Anson/Garrett Line of Credit. Plaintiffs
9 allege that each of these transfers required information to be processed
10 across state lines. The records of these transactions are in the possession
11 of COMERICA and Richard Marshack, the Bankruptcy Trustee for the
12 Four Star bankruptcy estate. As such, the forgoing is just a small sample
13 of the transfers.
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16 (b) On numerous occasions during the Loss Period, DEFENDANTS
17 deliberately did not return unpaid to the payee's bank checks drawn on the
18 Four Star Comerica Account when there were insufficient funds in that
19 account to honor the check, contrary to COMERICA's ordinary banking
20 practice for the handling of insufficient funds checks. Instead,
21 DEFENDANTS facilitated the transfer of sufficient funds into that account
22 from a non-Four Star account, and then paid the check. DEFENDANTS
23 took these actions with the specific intent to enable and facilitate the
24 Banking Scheme in furtherance of the Four Star Enterprise as alleged in
25 Paragraphs 32 through 37 above. To accomplish this, the DEFENDANTS
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1 transferred funds from the Anson/Garrett Line of Credit into the Four Star
2 Comerica Account by means of wire in interstate commerce within the
3 meaning of 18 U.S.C. § 1343. Specifically, but without limitation,
4 Plaintiffs allege that DEFENDANTS transferred monies from the
5 Anson/Garrett Line of Credit to the Four Star Comerica Account on the
6 following dates: 5/21/01, 11/05/01, 11/06/01, 11/29/01, 12/31/01, 01/08/02,
7 01/09/02, 01/10/02, 02/12/02, 02/15/02, 03/13/02, 12/09/02, and 12/11/02.
8 In total between 2000 and 2002 alone DEFENDANTS transferred
9 approximately \$42,524,551 from the Anson/Garrett Line of Credit into the
10 Four Star Comerica Account. Plaintiffs allege that each of these transfers
11 required information to be processed across state lines. The records of
12 these transactions are in the possession of COMERICA and Richard
13 Marshack, the Bankruptcy Trustee for the Four Star bankruptcy estate. As
14 such, the forgoing is just a small sample of the transfers.

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18 (c) COMERICA accepted numerous money transfers during the Loss Period
19 by means of wire in interstate commerce within the meaning of 18 U.S.C.
20 § 1343 to the Four Star Comerica Account, and then allowed said funds to
21 be transferred almost immediately to non-Four Star accounts, thus
22 maintaining the balance of the Four Star Comerica Account below zero, at
23 zero or near-zero. These actions were done for the purpose of furthering
24 the Banking Scheme, which was an integral component of the Four Star
25 Enterprise, as alleged in Paragraphs 29 through 37 above. Plaintiffs do
26 not know the full extent of transfers as the records of these transactions are
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1 in the possession of COMERICA and Richard Marshack, the Bankruptcy
2 Trustee for the Four Star bankruptcy estate.

3 (d) COMERICA accepted numerous wired money transfers during the Loss
4 Period by means of wire in interstate commerce within the meaning of 18
5 U.S.C. § 1343 to the Four Star Comerica Account of funds from non-Four
6 Star accounts controlled by the Four Star Managers and/or from other
7 accounts where the transfer of funds was directed by the Four Star
8 Managers, and which funds, once transferred to the Four Star Comerica
9 Account, were then used by Four Star to further the Banking Scheme and
10 the Four Star Enterprise. This includes funds transferred from the Four
11 Star Comerica Account to an account for FSF, LLC, which was an entity
12 created and controlled by the Four Star Managers for the specific purpose
13 of hiding Four Star funds from Four Star creditors holding Creditor Writs.
14 Plaintiffs allege that the DEFENDANTS allowed an account to be opened
15 in the name of FSF, LLC, knowing that it was created by the Four Star
16 Managers for said purpose. The DEFENDANTS allowed funds to be
17 transferred between the Four Star Comerica Account and FSF, LLC
18 account on the following dates: 2/20/01; 2/21/01; 2/23/01; 3/01/01;
19 3/07/01. Plaintiffs allege that each of these transfers required information
20 to be processed across state lines. The records of these transactions are in
21 the possession of COMERICA and Richard Marshack, the Bankruptcy
22 Trustee for the Four Star bankruptcy estate. As such, the forgoing is just a
23 small sample of the transfers.
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1 (e) On numerous occasions during the Loss Period COMERICA was served
2 by Four Star creditors with Creditor Writs. On numerous occasions during
3 said period COMERICA did knowingly cause to be transmitted by mail
4 via interstate carriers and/or wire, communications which represented that
5 Four Star had little or no funds in accounts maintained at COMERICA.
6 These representations were false and/or materially misleading in that
7 COMERICA knew that Four Star's funds were in fact being concealed in
8 accounts held in other names but controlled by Four Star. COMERICA
9 made these representations for the purposes of concealing Four Star funds
10 from said creditors and furthering the Banking Scheme and the Four Star
11 Enterprise. Said actions constituted unlawful mail fraud and wire fraud
12 within the meaning of 18 U.S.C. §§ 1341 and 1343. The records of these
13 transactions are in the possession of COMERICA.

14 (f) Throughout the Loss Period, every time one of the Plaintiffs deposited a
15 Four Star check into said Plaintiff's personal bank account,
16 communications would occur between COMERICA and the Plaintiff's
17 bank, and monies would be transferred. These communications and
18 money transfers were transmitted via wire in interstate commerce within
19 the meaning of 18 U.S.C. § 1343, or mail within the meaning of 18
20 U.S.C. § 1341. Communications and money transfers between
21 COMERICA and the banks of Plaintiffs occurred on hundreds of
22 occasions. These actions were done for the purpose of furthering the
23 Banking Scheme and the Four Star Enterprise.
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1 (g) COMERICA carried out the acts alleged above with the specific intent to
2 promote the Banking Scheme, which was an integral component of the
3 Four Star Enterprise, and at all times relevant to this Complaint knew the
4 transactions described above were designed to further the Banking Scheme
5 by concealing the nature, location, source and ownership of Four Star
6 funds and monies invested into Four Star from Four Star creditors holding
7 Creditor Writs. Said actions constituted unlawful money laundering within
8 the meaning of 18 U.S.C. § 1956(a).
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11 105. Upon information and belief, COMERICA received income derived directly or
12 indirectly from the pattern of racketeering activity alleged above because, as a result of the
13 transfer of funds from the Four Star Comerica Account to the Anson/Garrett Line of Credit, a
14 portion of the outstanding balance owed to COMERICA on said line of credit, including accrued
15 interest owing to COMERICA, was thereby satisfied.
16

17 106. Upon information and belief, COMERICA used, directly or indirectly, a portion of
18 the income it received from the pattern of racketeering activity by virtue of the fact that,
19 subsequent to transfers of funds from the Four Star Comerica Account to the Anson/Garrett Line
20 of Credit, COMERICA caused funds to be transferred from said line of credit to the Four Star
21 Comerica Account, with the knowledge and intent that a portion of said funds were to be used,
22 and were in fact used, to honor the payment of Investor Distribution checks issued by Four Star to
23 Plaintiffs, and to honor the payment of checks issued by Four Star to selected creditors of Four
24 Star, all in furtherance of the Banking Scheme and the Four Star Enterprise.
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107. DEFENDANTS' continuous and repeated violations of 18 U.S.C. § 1341, 18 U.S.C. § 1343, and 18 U.S.C. § 1956, as alleged above constitute a pattern of racketeering activity within the meaning of 18 U.S.C. § 1962(c).

108. Upon information and belief, DEFENDANTS' violations of 18 U.S.C. § 1962(c) injured Plaintiffs in that these acts aided, abetted, and perpetrated the Banking Scheme and the Four Star Enterprise as alleged in Paragraphs 29 through 37 above.

109. DEFENDANTS' continuous and repeated acts in violation of 18 U.S.C. § 1341, 18 U.S.C. § 1343, and 18 U.S.C. § 1956, which acts were performed by DEFENDANTS with the intent to assist, facilitate and further the Banking Scheme and the Four Star Enterprise, constitute a conspiracy to violate the provisions of 18 U.S.C. § 1962(c), in violation of 18 U.S.C. § 1962(d).

110. Upon information and belief, DEFENDANTS' violations of 18 U.S.C. § 1962(d) injured Plaintiffs in that these acts aided, abetted, and perpetrated the Banking Scheme and the Four Star Enterprise.

111. By reason of the foregoing, Plaintiffs have been, and will continue to be, injured in their business and property in an amount exceeding \$50 million. Plaintiffs are entitled to damages according to proof, treble damages and litigation costs including attorneys' fees.

WHEREFORE, Plaintiffs pray judgments against DEFENDANTS as hereinafter set forth.

SIXTH CAUSE OF ACTION
Violation of 18 U.S.C. § 1961(d) (RICO)
(Against All Defendants)

112. Plaintiffs hereby incorporate by reference and re-allege all of the general allegations contained in Paragraphs 1 through 75 above.

113. Each of the DEFENDANTS is a "person" within the meaning of that term as used in 18 U.S.C. § 1962.

1 114. At all times relevant to this Complaint, Four Star, the Four Star Managers, and
2 Smith collectively constituted an "enterprise", i.e., the Four Star Enterprise, within the meaning of
3 that term as used in 18 U.S.C. § 1962. Upon information and belief, at all times relevant to this
4 Complaint the Four Star Enterprise was an ongoing association that functioned as a continuing
5 unit for the purposes of acts of racketeering as hereinafter alleged in furtherance of the fraud, the
6 Four Star Ponzi Scheme and the Banking Scheme alleged in Paragraphs 29 through 37 above.

8 115. At all times relevant to this Complaint, the Four Star Enterprise engaged in
9 interstate commerce and the activities of the enterprise affected interstate commerce.

10 116. As previously alleged, Four Star and the Four Star Managers operated a Ponzi
11 scheme, i.e., Four Star Ponzi Scheme. In order to maintain said scheme, Four Star, the Four Star
12 Managers and Smith engaged in a pattern of racketeering activity in furtherance of the Four Star
13 Enterprise, consisting of numerous related and continuous acts of mail fraud, as the term is
14 defined in 18 U.S.C. § 1341, wire fraud, as that term is defined in 18 U.S.C. § 1343, and money
15 laundering, as the term is defined in 18 U.S.C. § 1956, and committed these acts willfully or with
16 actual knowledge of the illegal activities. Acts in furtherance of the Four Star Enterprise include,
17 but are not limited to the following:

- 20 (a) On numerous occasions during the Loss Period, Four Star and the Four
21 Star Managers used the mail, as defined by 18 U.S.C. § 1341 to make
22 Investor Distributions from the Four Star Comerica Account. During
23 this period Four Star did not have significant income or other source of
24 cash flow other than new investments, and these distributions were made
25 entirely or almost entirely from new investments. These distributions
26 were made to further the Four Star Ponzi Scheme and the Banking
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1 Scheme by fraudulently representing to investors, including Plaintiffs,
2 that Four Star was solvent and profitable, the Cash Flow Representation.
3 Specific examples of transfers include: 3/31/02, 4/30/02, 5/31/02
4 payments to Plaintiff O'MALLEY in the amount of \$5,000 each month;
5 a 1/1/02 payment to Plaintiff PRITIKIN in the amount of \$11,382; a
6 1/31/02 Plaintiff PRITIKIN in the amount of \$13,605, and 2/28/02,
7 3/31/02, 4/30/02 payments in the amount of \$9,882 each to Plaintiff
8 PRITIKIN. Records of these transactions are in the possession of Richard
9 Marshack, the Bankruptcy Trustee for the Four Star bankruptcy estate.
10 Said actions constitute unlawful mail fraud within the meaning of 18
11 U.S.C. § 1341.
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14 (b) On numerous occasions during the Loss Period, Four Star, the Four Star
15 Managers and Smith used the mail, as defined by 18 U.S.C. § 1341, and
16 interstate wires, as defined by 18 U.S.C. § 1343, to receive funds
17 invested by Plaintiffs. These investments were made by Plaintiffs in
18 reliance on the Solicitation Representations and the Cash Flow
19 Representation made by Four Star and the Four Star Managers. Records
20 of such transactions are in the possession of Richard Marshack, the
21 Bankruptcy Trustee for the Four Star bankruptcy estate. Said actions
22 constitute unlawful mail fraud within the meaning of 18 U.S.C. § 1341,
23 and unlawful wire fraud within the meaning of 18 U.S.C. § 1343.
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26 (c) On or around November 5, 2007, Cohn pleaded guilty to wire fraud
27 within the meaning of 18 U.S.C. § 1341, in regards to a transfer made on
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1 or around October 12, 2001 of \$2,000,000 into a Four Star Citi Bank
2 Account by a Four Star investor in reliance on a false promise that said
3 funds would be used in Arbitrage #5.

4 (d) Both prior to and during the Loss Period, Four Star and the Four Star
5 Managers used the mail, as defined by 18 U.S.C. § 1341, and interstate
6 wires, as defined by 18 U.S.C. § 1343, to send numerous
7 correspondence, including the Solicitation Representations and the Cash
8 Flow Representation as described in Paragraphs 59 through 62 and
9 Paragraph 66 above, for the purposes of defrauding, and obtaining
10 money by false pretenses from the Four Star investors, including the
11 Plaintiffs. Said actions constitute unlawful mail fraud within the
12 meaning of 18 U.S.C. § 1341 and unlawful wire fraud within the
13 meaning of 18 U.S.C. § 1343.

14 (e) Four Star, the Four Star Managers and Smith assisted in causing the
15 transfers between Four Star Comerica Account and the Anson/Garrett
16 Line of Credit as alleged in parts (a), (b), (c) and (d) of Paragraph 104
17 above, which allegations are incorporated herein by reference. Said
18 actions constitute unlawful wire fraud within the meaning of 18 U.S.C. §
19 1343.

20 (f) At all material times herein alleged, Four Star and the Four Star
21 Managers knowingly conducted financial transactions involving the
22 proceeds of specified unlawful activity, namely, mail fraud and wire
23 fraud in violation of 18 U.S.C. §§ 1341 and 1343, knowing that the
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1 monies involved in the financial transactions represented the proceeds of
2 some form of unlawful activity, and with the intent to promote the
3 carrying on of such specified unlawful activity. Said actions constitute
4 Promotional Money Laundering in violation of 18 U.S.C. §
5 1956(a)(1)(A)(i).
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7 117. Four Star's, the Four Star Managers' and Smith's continuous and repeated
8 violations of 18 U.S.C. § 1341, 18 U.S.C. § 1343, and 18 U.S.C. § 1956 constitute a pattern of
9 racketeering activity within the meaning of 18 U.S.C. § 1962(c).
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11 118. Upon information and belief, Four Star's, the Four Star Managers' and Smith's
12 violations of 18 U.S.C. § 1962(c) injured Plaintiffs.

13 119. As alleged in Paragraphs 32 through 37 above, DEFENDANTS knowingly
14 conspired, and substantially assisted and aided and abetted Four Star, the Four Star Managers
15 and Smith in committing the violations of 18 U.S.C. § 1962(c) by enabling and facilitating
16 Four Star's and the Four Star Managers' operation of the Banking Scheme. Said actions
17 constitute a violation of 18 U.S.C. § 1962(d). DEFENDANTS' violations of 18 U.S.C. §
18 1962(d) injured Plaintiffs in that these acts aided, abetted, and perpetrated the Banking Scheme
19 and the Four Star Enterprise.
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21 120. By reason of the foregoing, Plaintiffs have been, and will continue to be, injured in
22 their business and property in an amount exceeding \$50 million. Plaintiffs are entitled to damages
23 according to proof, treble damages and litigation costs including attorneys' fees.
24

25 WHEREFORE, Plaintiffs pray judgments against DEFENDANTS as hereinafter set forth.

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SEVENTH CAUSE OF ACTION
Civil Conspiracy
(Against All Defendants)

121. Plaintiffs hereby incorporate by reference and re-allege all of the allegations and specific causes of action 1 through 6 above contained in Paragraphs 1 through 120 above.

122. Plaintiffs are informed and believe, and on that basis allege, that at all times herein mentioned, each of the DEFENDANTS was the agent and/or employee of each of the remaining DEFENDANTS, and in doing the things hereinafter alleged, was acting within the course and scope of such agency and/or employment, and that all DEFENDANTS acted at all times with the knowledge of the actions of each of the remaining DEFENDANTS.

123. As more fully set forth above, Plaintiffs allege on information and belief that, during the Loss Period, DEFENDANTS, and each of them, knowingly and willfully conspired and agreed among themselves and with Four Star, the Four Star Managers and Smith, or in the alternative, later joined the ongoing conspiracy and fully ratified all material past actions and the purpose of the conspiracy and agreed, *inter alia*, as follows:

- (a) To form the Four Star Enterprise for the purpose of assisting, facilitating and furthering the Banking Scheme as alleged above;
- (b) To misappropriate and convert the monies invested by Plaintiffs in Four Star during the Loss Period;
- (c) To defraud Plaintiffs of their investments and to breach duties owed to Plaintiffs;
- (d) To derive other profits and benefits through the pattern of racketeering activity and other fraud alleged above.

1 124. DEFENDANTS, and each of them, did the acts and things alleged above pursuant
2 to, and in furtherance of, said conspiracy and the above-alleged agreement.

3 125. As alleged in more detail above, each of the DEFENDANTS furthered the
4 conspiracy by cooperating with, lending aid, money and encouragement to, and/or ratifying and
5 adopting the acts of each of the other DEFENDANTS in enabling and facilitating the Banking
6 Scheme. Each of the DEFENDANTS had knowledge not only of the actions of each of the other
7 DEFENDANTS in connection with the Banking Scheme, but also of the conspiracy itself and its
8 unlawful and tortious purpose. The last known act of the conspiracy is believed to have occurred
9 no earlier than 2004 when Four Star informed the Bankruptcy Trustee that its only remaining
10 funds held by COMERICA consisted of \$82.00 in the Four Star Comerica Account.

11 126. As a direct and proximate cause of said conspiracy and the wrongful acts alleged
12 herein, Plaintiffs suffered economic damages in an amount exceeding \$50 million.

13 127. As a proximate result of DEFENDANTS' conduct, many of the Plaintiffs suffered
14 severe emotional distress, including without limitation anxiety, nervousness, sleeplessness,
15 humiliation, anguish, and physical distress. As a result of such harm, such Plaintiffs have
16 suffered such damages in an amount according to proof.

17 128. DEFENDANTS' actions were malicious, fraudulent, oppressive, intended to
18 injure Plaintiffs and/or in reckless disregard of Plaintiffs' rights. Consequently, Plaintiffs are
19 entitled to punitive damages.

20 129. Several of the Plaintiffs are senior citizens and/or disabled persons as those terms
21 are defined by California Civil Code § 3345. Plaintiffs are informed and believe and thereon
22 allege that one or more of the following are true: (a) when DEFENDANTS aided and abetted the
23 unfair and/or deceptive acts of Four Star, the Four Star Managers and Smith as alleged above,
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1 DEFENDANTS knew or should have known that said acts were directed to one or more senior
2 citizen Plaintiffs and/or disabled Plaintiffs; (b) said acts by DEFENDANTS caused one or more of
3 said senior citizen Plaintiffs or disabled Plaintiffs to suffer one or more of the following: (i) loss or
4 encumbrance of a primary residence, principal employment, or source of income; (ii) substantial
5 loss of property set aside for retirement, or for personal or family care and maintenance; or (iii)
6 substantial loss of payments received under a pension or retirement plan or a government benefits
7 program, or assets essential to the health or welfare of said Plaintiffs; (c) one or more of said
8 senior citizen Plaintiffs or disabled Plaintiffs were substantially more vulnerable than other
9 members of the public to DEFENDANTS' conduct because of age, poor health or infirmity,
10 impaired understanding, restricted mobility or disability, and actually suffered substantial
11 physical, emotional and/or economic damage. Accordingly, said senior citizen Plaintiffs and
12 disabled Plaintiffs are entitled to all of the remedies of Civil Code § 3345 against each of the
13 DEFENDANTS, including without limitation treble the amount of punitive damages to which
14 said Plaintiffs would otherwise be entitled. In addition, said Plaintiffs are entitled to recover their
15 attorneys' fees under California Welfare & Institutions Code § 15657.

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19 WHEREFORE, Plaintiffs pray judgments against DEFENDANTS, and each of them, as
20 follows:

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22 (1) For aiding and abetting breach of fiduciary duty, compensatory damages for
23 economic loss in an amount to be proven at trial but believed to exceed \$50 million, interest on
24 that amount, including prejudgment interest, at the legal rate, compensatory damages for severe
25 emotional and physical distress, and punitive damages pursuant to California Code of Civil
26 Procedure § 3294, and, in addition, for those Plaintiffs who were senior citizens and/or disabled
27 persons within the meaning of California Civil Code § 3345 at the time DEFENDANTS aided
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1 and abetted unfair or deceptive acts of Anson, Garrett and Cohn in violation of their fiduciary
2 duties to said Plaintiffs, all remedies authorized under California Civil Code § 3345, including
3 without limitation treble the amount of punitive damages to which said Plaintiffs would otherwise
4 be entitled, and attorneys' fees under California Welfare & Institutions Code § 15657.
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6 (2) For aiding and abetting fraud, compensatory damages for economic loss in an
7 amount to be proven at trial but believed to exceed \$50 million, interest on that amount, including
8 prejudgment interest, at the legal rate, compensatory damages for severe emotional and physical
9 distress, and punitive damages pursuant to California Code of Civil Procedure § 3294, and, in
10 addition, for those Plaintiffs who were senior citizens and/or disabled persons within the meaning
11 of California Civil Code § 3345 at the time DEFENDANTS aided and abetted fraudulent acts
12 against said Plaintiffs, all remedies authorized under California Civil Code § 3345, including
13 without limitation treble the amount of punitive damages to which said Plaintiffs would otherwise
14 be entitled, and attorneys' fees under California Welfare & Institutions Code § 15657.
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16 (3) For violation of California Business and Professions Code § 17200, all remedies
17 to which Plaintiffs are entitled under California Business and Professions Code § 17203, including
18 without limitation restitution, disgorgement, and penalties for each illegal, unfair and/or fraudulent
19 business act or practice, and attorneys' fees pursuant to California Code of Civil Procedure §
20 1021.5 and the Court's equitable powers, in an amount according to proof, and, in addition, for
21 those Plaintiffs who were senior citizens and/or disabled persons within the meaning of California
22 Civil Code § 3345 at the time of DEFENDANTS' unfair or deceptive acts against said Plaintiffs
23 in violation of California Business and Professions Code § 17200, all remedies authorized under
24 California Civil Code § 3345, including without limitation treble the amount of restitution or other
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1 relief to which said Plaintiffs would otherwise be entitled under California Business & Professions
2 Code § 17203, and attorneys' fees under California Welfare & Institutions Code § 15657.

3 (4) For aiding and abetting violation of California Business and Professions Code §
4 17200, all remedies to which Plaintiffs are entitled under California Business and Professions
5 Code § 17203, including without limitation restitution, disgorgement, and penalties for each
6 illegal, unfair and/or fraudulent business act or practice, and attorneys' fees pursuant to California
7 Code of Civil Procedure § 1021.5 and the Court's equitable powers, in an amount according to
8 proof, and, in addition, for those Plaintiffs who were senior citizens and/or disabled persons
9 within the meaning of California Civil Code § 3345 at the time DEFENDANTS aided and abetted
10 unfair or deceptive acts against said Plaintiffs in violation of California Business and Professions
11 Code § 17200, all remedies authorized under California Civil Code § 3345, including without
12 limitation treble the amount of restitution or other relief to which said Plaintiffs would otherwise
13 be entitled under California Business & Professions Code § 17203, and attorneys' fees under
14 California Welfare & Institutions Code § 15657.

15 (5) For violation of 18 U.S.C. § 1961 *et seq.* (RICO), compensatory damages in an
16 amount to be proven at trial but believed to exceed \$50 million, trebling of those damages, interest
17 on that amount, and attorneys' fees.

18 (6) For civil conspiracy, economic damages in an amount to be proven at trial but
19 believed to exceed \$50 million; interest on that amount, including prejudgment interest, at the
20 legal rate; compensatory damages for severe emotional and physical distress; and punitive
21 damages pursuant to California Code of Civil Procedure § 3294, and, in addition, for those
22 Plaintiffs who were senior citizens and/or disabled persons within the meaning of California Civil
23 Code § 3345 at the time DEFENDANTS conspired to engage in unfair or deceptive acts against
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1 said Plaintiffs, all remedies authorized under California Civil Code § 3345, including without
2 limitation treble the amount of punitive damages to which said Plaintiffs would otherwise be
3 entitled, and attorneys' fees under California Welfare & Institutions Code § 15657.

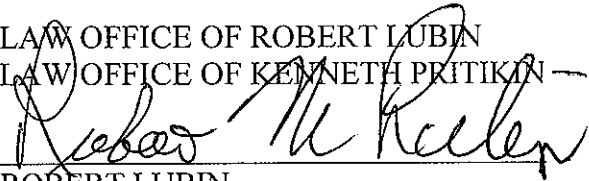
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5 (7) For costs of suit herein.

6 (8) For an award to Plaintiffs of such other and further relief as this Court deems just
7 and proper.

8 **JURY DEMAND**

9 Pursuant to Fed. R. Civ. Proc. 38 the Plaintiffs hereby demand a jury.

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12 DATED: July 20, 2009

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14 LAW OFFICE OF ROBERT LUBIN
15 LAW OFFICE OF KENNETH PRITIKIN
16 
17 ROBERT LUBIN
18 KENNETH PRITIKIN
19 JOSEPH CAMENZIND, IV
20 Attorneys for the Plaintiffs.
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